THE LAW OF EVIDENCE

BEING

ACT No. 1 OF 1872

WITH INDEX.

TO WHICH IS APPENDED THE SPEECH OF THE HONORABLE J. FITZJAMES STEPHEN ON THE INTRODUCTION OF THE BILL INTO COUNCIL TOGETHER WITH THE REPORTS OF THE SELECT COMMITTEE THEREON.

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CONTENTS.

Preamble.

PART I.

RELEVANCY OF FACTS.

CHAPTER I.—PRELIMINARY.

SECTION.

1. Short title.
   Extent.
   Commencement of Act.
2. R peal of enactments.
3. Interpretation-clause.
4. "May presume."
   "Shall presume."
   "Conclusive proof."

CHAPTER II.—OF THE RELEVANCY OF FACTS.

5. Evidence may be given of facts in issue and relevant facts.
6. Facts forming part of same transaction.
7. Facts which are occasion, cause, or effect of facts in issue.
8. Motive, preparation, and subsequent conduct.
9. Facts necessary to explain or introduce relevant facts.
10. Things said or done by conspirator in reference to common design.
11. When facts not otherwise relevant become relevant.
12. In suits for damages, evidence may be given of facts tending to determine amount.
13. Facts relevant when right or custom is in question.
14. Facts showing existence of state of mind, or of body or bodily feeling.
15. Act forming part of series of occurrences.
16. Course of business when relevant.

ADMISSIONS.

17. Admissions defined.
18. Admissions by parties interested in subject-matter.
19. Admissions by persons whose position must be proved as against party to suit.
20. Admissions by persons expressly referred to by party to suit.
21. Relevancy of admissions against or in behalf of persons concerned.
22. When oral admissions as to contents of documents are relevant.
23. Admissions in civil cases when relevant.

SECTION.

24. Admissions of crime caused by inducement, threat, or promise irrelevant.
25. Confession made to a police officer shall not be used as evidence.
26. Confession made while the accused is in custody of the police shall not be used as evidence.
27. So much of any statement or confession made by the accused as relates to a fact thereby discovered, may be given in evidence.
28. Admission made after removal of impression caused by inducement, threat, or promise relevant.
29. Admission otherwise relevant not irrelevant on certain grounds.
30. Consideration of proved admission affecting person making it and others jointly under trial for same offence.
31. When admissions are conclusive proof.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

32. When statement by person who is dead or cannot be found, &c., is relevant.
Statement as to cause of death.
Statements in course of business.
Statements against interest.
Matters of general interest.
As to relationship,
Recitals as to relationship in deeds.
Statements in deeds.
33. Evidence in a former judicial proceeding when relevant.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

34. Entries in books of account.
35. Entry in public record, made in performance of duty enjoined by law, when relevant.
36. Maps and plans when relevant.
37. Statement as to fact of public nature contained in any Act or Notification of Government, when relevant.
38. Statements in law books.

HOW MUCH OF A STATEMENT IS TO BE PROVED.

39. What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

40. Previous judgments relevant to bar a second suit or trial.
41. Judgments in probate, &c., jurisdiction.
42. Judgments, order, or decree between third parties when irrelevant and when not.
43. Fraud, collusion, and incompetency of Court may be proved.
44. What judgments, &c., not relevant.

OPINIONS OF THIRD PERSONS WHEN RELEVANT.

SECTION.
45. Opinions of experts.
46. Facts bearing upon opinions of experts.
47. Opinions as to hand-writing.
48. Opinion as to existence of right or custom, when relevant.
49. Opinions as to usages, tenets, &c., when relevant.
50. Opinion on relationship, when relevant.
51. Grounds of opinion, when relevant.

CHARACTER WHEN RELEVANT.

52. In civil cases, character to prove conduct imputed irrelevant.
53. In criminal cases, previous good character relevant.
54. Previous conviction in criminal trials relevant, but no previous bad character, except in reply.
55. Chapter as affecting damages.

PART II.

ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

56. No evidence required of relevant fact judicially noticed.
57. Facts of which Court must take judicial notice.
58. Facts admitted.

CHAPTER IV.—OF ORAL EVIDENCE.

59. Proof of facts by oral evidence.
60. Oral evidence must be direct.

CHAPTER V.—OF DOCUMENTARY EVIDENCE.

61. Proof of contents of documents.
62. Primary evidence.
63. Secondary evidence.
64. Proof of documents by primary evidence.
65. Cases in which secondary evidence relating to documents may be given.
66. Rules as to notice to produce.
67. Proof of signature and hand-writing of person alleged to have signed or written document produced.
68. Proof of execution of document required by law to be attested.
69. Proof where no attesting witness found.
70. Admission by party of execution.
71. Proof when attesting witness denies the execution.
72. Proof of document not required by law to be attested.
73. Comparison of hand-writings.

PUBLIC DOCUMENTS.

SECTION.
74. Public documents.
75. Private documents.
76. Certified copies of public documents.
77. Production of such copies.
78. Proof of other official documents.

PRESUMPTIONS AS TO DOCUMENTS.

79. Presumption as to genuineness of certified copies.
80. Presumptions on production of record of evidence.
81. Presumption as to Gazettes.
82. Presumption as to documents admissible in Englaud without proof of seal or signature.
83. Proof of maps made for purposes of any cause.
84. Presumption as to collections of laws and reports of decisions.
85 Presumption as to powers of attorney.
86. Presumption as to certified copies of foreign judicial records.
87. Presumption as to books and maps.
88. Presumption as to photographs, machine copies, and telegraphic messages.
89. Presumption as to due execution, &c., of documents not produced.
90. Documents thirty years old.

CHAPTER VI.—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. Evidence of terms of written contract.
92. Exclusion of evidence of oral agreement.
93. Exclusion of evidence to explain or amend ambiguous document.
94. Exclusion of evidence against application of document to existing facts.
95. Evidence as to document unmeaning in reference to existing facts.
96. Evidence as to application of language which can apply to one only of several persons.
97. Evidence as to application of language to one of two sets of facts to neither of which the whole correctly applies.
98. Evidence as to meaning of illegible characters, &c.
99. Who may give evidence as to matter to which document relates.
100. Saving of provisions of Indian Succession Act relating to wills.

PART III.

PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

101. Burden of proof.
102. General burden of proof.
103. Burden of proof as to particular fact.

SECTION.
104. Burden of proving fact to be proved to make evidence admissible.
105. Burden of establishing general exceptions.
106. Burden of proving fact especially within knowledge.
107. Burden of proof as to continuance of life.
108. Burden of proof as to death.
109. Burden of proof as to partnership, tenancy, and agency.
110. Burden of proof as to ownership.
111. Proof of good faith in transactions where one party is in relation of active confidence.
112. Birth during marriage, conclusive proof of legitimacy.
113. Proof of cession of territory.
114. Court may presume existence of certain facts.

CHAPTER VIII.—ESTOPPEL.

115. Estoppel.
116. Estoppel of tenant.
117. Estoppel of acceptor of bill of exchange, bailee, or licensee.

CHAPTER IX.—OF WITNESSES.

118. Who may testify.
119. Dumb witnesses.
120. Married persons in civil and criminal proceedings.
121. Judges and Magistrates.
122. Communications during marriage.
123. Evidence as to affairs of State.
124. Official communications.
125. Information as to commission of offences.
126. Professional communications.
127. Section 126 to apply to interpreters, &c.
128. Waiver of privilege if party volunteers evidence.
129. Confidential communication with legal advisers.
130. Production of witness' title-deeds.
131. Production of documents belonging to another person.
132. Witness bound to answer criminating questions.
Proviso.
133. Accomplice.
134. Number of witness.

CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

135. Order of production and examination of witnesses.
136. Judge to decide as to relevancy of facts.
137. Examination-in-chief.
Cross-examination.
Re-examination.
138. Order of examinations. Direction of re-examination.
139. Cross-examination of person called to produce a document.
140. Witness to character.
141. Leading questions.

SECTION.
142. When they must not be asked.
143. When they may be asked.
144. Evidence as to matters in writing.
145. Cross-examination as to previous statements in writing.
146. Questions lawful in cross examination.
147. When witness to be compelled to answer.
148. Court to decide when question shall be asked and when witness compelled to answer.
149. Questions not to be asked without reasonable grounds.
150. Procedure of Court in case of question being without reasonable grounds.
151. Indecent and scandalous questions.
152. Questions intended to insult or annoy.
153. Exclusion of evidence to contradict answers to questions testing veracity.
154. Cross-examination by party producing witness.
155. Impeaching credit of witness.
156. Corroborative facts are relevant.
157. Evidence in reply to evidence of former inconsistent statements.
158. Statement relevant under section 32 or 33.
159. Refreshing memory.
Court may permit a copy of document to be used to refresh memory.
160. Testimony to facts stated in document mentioned in section 159.
161. Producing writing used to refresh memory.
162. Production of documents.
Translation of documents.
163. Giving as evidence of document called for and produced on notice.
164. Giving as evidence of document production of which was refused on notice.
165. Judge's power to put questions or order production.
166. Power of jury or assessors to put questions.

CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. No new trial for rejection or improper reception of evidence.
SCHEDULE.
INDEX.
APPENDIX A.—Speech of the Hon'ble Fitzjames Stephen on the 31st March, 1871.
APPENDIX B.—First Report of Select Committee.
Second Report of ditto.

THE INDIAN EVIDENCE ACT.

Passed by the Governor General of India in Council.

Preamble.

WHEREAS it is expedient to consolidate, define and amend the Law of Evidence, it is hereby enacted as follows :—

PART I.

Relevancy of Facts.

CHAPTER I.—PRELIMINRAY.

Short title.

Extent.

Commencement of Act.

1. This Act may be called "The Indian Evidence Act 1872." It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts Martial, but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator; and it shall come into force on the first day of September 1872.

Repeal of Enactment.

2. On and from that day the following laws shall be repealed:—

(1.) All rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India.

(2.) All such rules, laws and regulations as have acquired the force of law under the twenty-fifth section of "The Indian Councils' Act, 1861," in so far as they relate to any matter herein provided for.

(3.) The enactments mentioned in the Schedule hereto, to the extent specified in the third column of the said Schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India, and not hereby expressly repealed.

Interpretation-clause.

3. In this Act the following words and expressions are used in the following senses unless a contrary intention appear from the context.

"Court."

"Court" includes all Judges and Magistrates and all persons except Arbitrators legally authorised to take evidence.

"Fact" means and includes (1) anything, state of things, or relation of things capable of being perceived by the senses; (2) any mental condition of which any person is conscious.

"Fact"

Illustrations.

(*a.*) *That there are certain objects arranged in a certain order, in a certain place, is a fact.*

(*b.*) *That a man heared or saw something is a fact.*

(*c.*) *That a man said certain words is a fact.*

(*d.*) *That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation is a fact.*

(*e.*) *That a man has a certain reputation is a fact.*

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Relevant."

The expression "Facts in Issue" means and includes any fact, from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disliability, asserted or denied in any suit or proceeding, necessarily follows.

"Facts in Issue."

Explanation.—Whenever, under the provisions of the law for the time being relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue :—

That A caused B's death.

That A intended to cause B's death.

That A had received grave and sudden provocation from B.

That A at the time of doing the act which caused B's death was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document" means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of

"Document."

those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing is a document.
Words printed, lithographed or photographed are documents.
A map or plan is a document.
An inscription on a metal plate or stone is a document.
A caricature is a document.

"Evidence" means and includes (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence: (2) all documents produced for the inspection of the Court; such documents are called documentary evidence:

"Evidence."

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Proved."

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Disproved."

A fact is said not to be proved when it is neither proved nor disproved.

"Not proved."

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

"May presume."

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

"Shall presume."

When one fact is declared by this Act to be conclusive proof of another, the Court shall on proof of the one fact regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

"Conclusive proof."

CHAPTER II.—OF THE RELEVANCY OF FACTS.

Evidence may be given of facts in issue and relevant facts.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being relating to Civil Procedure.

Illustrations.

(*a.*) *A is tried for murder of B by beating him with a club with the intention of causing his death.*

At A's trial the following facts are in issue—

A's beating B with the club.
A's causing B's death by such beating.
A's intention to cause B's death.

(*b.*) *A suitor does not bring with him and have in readiness for production at the first hearing of the case a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.*

Facts forming part of same transaction.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same or at different times and places.

Illustrations.

(*a.*) *A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it, as to form part of the transaction, is a relevant fact.*

(*b.*) *A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.*

(*c.*) *A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the*

subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(*d.*) *The question is whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.*

Facts which are occasion, cause or effect of fact in issue.

7. Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction are relevant.

Illustrations.

(*a.*) *The question is, whether A robbed B.*

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons are relevant.

(*b.*) *The question is, whether A murdered B.*

Marks on the ground produced by a struggle at or near the place where the murder was committed are relevant facts.

(*c.*) *The question is whether A poisoned B.*

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact.

Explanation 1.—The word "conduct" in this section does not include statements ; unless those statements accompany and explain acts other than statements : but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(*a.*) *A is tried for the murder of B.*

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(*b.*) *A sues B upon a bond for the payment of money. B denies the making of the bond.*

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c.*) *A is tried for the murder of B by poison.*

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(*d.*) *The question is whether a certain document is the will of A.*

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakíls in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(*e.*) *A is accused of a crime.*

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favorable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(*f.*) *The question is, whether A robbed B.*

The facts that, after B was robbed, C said in A's presence—'the police are coming to look for the man who robbed B,'—and that immediately afterwards A ran away, are relevant.

(*g.*) *The question is, whether A owes B rupees* 10,000.

The facts that A asked C to lend him money. and that D said to C in A's presence and hearing—'I advise you not to trust A, for he owes B 10,000 *rupees,'—and that A went away without making any answer, are relevant facts.*

(*h.*) *The question is whether A commited a crime.*

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(*i.*) *A is accused of a crime.*

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of

property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*j.*) *The question is, whether A was ravished.*

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which and the terms in which the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant

as a dying declaration under section 32 (1), *or*

as corroborative evidence under section 157.

(*k.*) *The question is, whether A was robbed.*

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint is not relevant as conduct under this section, though it may be relevant as

as a dying declaration under section 32 (1), *or*

as corroborative evidence under section 157.

Facts necessary to explain or introduce relevant facts.

9. Facts necessary to explain or introduce a fact in issue or relevant fact or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(*a.*) *The question is whether a given document is the will of A.*

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(*b.*) *A sues B for a libel imputing disgraceful conduct to A. B affirms that the matter alleged to be libellous is true.*

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the acts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B,

(*c.*) *A is accused of a crime.*

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section eight, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d.*) *A sues B for inducing C to break a contract of service made by him with A. C on leaving A's service says to A, I am leaving you because B has made me a better offer. This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.*

(*e.*) *A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it—'A says you are to hide this.' B's statement is relevant as explanatory of the nature of the transaction.*

(*f.*) *A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the transaction.*

Things said or done by conspirator in reference to common design.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, any thing said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

(*a.*) *Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.*

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant both to prove the existence of the conspiracy and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact ;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(*a.*) *The question is, whether A committed a crime at Calcutta on a certain day.*

The fact that on that day A was at Lahore is relevant.

The fact that near the time when the crime was committed, A was at a distance from the place where it was committed, which would rendered it highly improbable, though not impossible, that he committed it, is relevant.

(*b.*) *The question is, whether A committed a crime.*

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D, is relevant.

In suits for damages, evidence may be given of facts tending to determine amount.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant:—

(*a.*) Any transaetion by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence.

(*b.*) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcileable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Facts showing existence of state of mind, or of body or bodily feeling.

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling, is in issue or relevant.

Explanation.—A fact relevant as showing the existence of a relevant state of mind must show that it exists not generally but in reference to the particular matter in question.

Illustrations.

(*a.*) *A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.*

The fact that at the same time he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(*b.*) *A is accused of fraudulently delivering to another person a piece of counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.*

The fact that at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

(*c.*) *A sues B for damage done by a dog of B's, which B knew to be ferocious.*

The facts that the dog had previously bitten X, Y and Z and that they had made complaints to B, are relevant.

(d.) The question, is whether A, the acceptor of a bill of exchange, knew that the same of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(e.) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f.) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him is relevant, as showing that A made the representation in good faith.

(g.) A is sued by B for the price of work done by B upon a house of which A is owner by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h.) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew or had reason to believe that the notice was given fraudulently by C, who had heard of the loss of

the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i.) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j.) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved as showing the intention of the letters.

(k.) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty, are relevant facts.

(l.) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(m.) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question, are relevant facts.

(n.) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant.

The fact that B was habitually negligent about the carriages which he let to hire, is irrelevant.

(o.) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them, is irrelevant.

(p.) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime, is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class, is irrelevant.

Act forming part of series of occurrences.

15. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(*a.*) *A is accused of burning down his house in order to obtain money for which it is insured.*

The facts that A lived in several houses successively each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(*b.*) *A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.*

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*c.*) *A is accused of fraudulently delivering to B a counterfeit rupee.*

The question is, whether the delivery of the rupee was accidental.

The facts that soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

Course of business when relevant.

16. When there is a question whether a particular act was done, the existence of any course of business according to which it naturally would have been done is a relevant fact.

Illustrations.

(*a.*) *The question is, whether a particular letter was despatched.*

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(*b.*) *The question is, whether a particular reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.*

ADMISSIONS.

Admissions defined.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons hereinafter mentioned.

Statements made by a party to the proceeding, or by an agent to any such party whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them are admissions.

Statements made by parties to suits suing or sued in a representative character are not admissions, unless they were made while the party making them held that character.

Admission by parties interested in subject-matter.

18. Statements made by (1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or (2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, are admissions if they are made during the continuance of the interest of the persons making the statements.

Admissions by persons whose position must be proved as against party to suit.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustration.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is whether a horse sold by A to B is sound.

A says to B 'Go and ask C, C knows all about it.' C's statement is an admission.

Relevancy of admissions against or in behalf of persons concerned.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases :—

(1.) An admission may be proved by or on behalf of the person making it when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2.) An admission may be proved by or on behalf of the person making it when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3.) An admission may be proved by or on behalf of the person making it if it is relevant otherwise than as an admission.

Illustrations.

(*a.*) *The question between A and B is whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.*

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(*b.*) *A, the Captain of a ship, is tried for casting her away.*

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties if he were dead under section 32 (1).

(*c.*) *A is accused of a crime committed by him at Calcutta. He produces a letter written by himself and dated at Lahore on that day and bearing the Lahore post mark of that day.*

The statement in the date of the letter is admissible, because, if A were dead out, it would be admissable under section 32 (2).

(*d.*) *A is accused of receiving stolen goods knowing them to be stolen.*

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e.*) *A is accused of fraudulently having in his possesion counterfeit coin which he knew to be counterfeit.*

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that the person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last illustration.

When oral admissions as to contents of documents are relevant.

22. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Admissions in civil cases when relevant.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakíl from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Admission of crime caused by inducement, threat or promise irrelevant.

24. An admission made by an accused person is irrelevant in a criminal proceeding if the making of the admission appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession made to a Police officer shall not be used as evidence.

25. No admission of guilt made to a Police officer, shall be proved as against a person accused of any offence.

Confession made while the accused is in custody of the Police shall not be used as evidence.

26. No admission of guilt made by any person whilst he is in the custody of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

So much of any statement or confession made by the accused as relates to a fact thereby discovered may be given in evidence.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police officer, so much of such information, whether it amounts to an admission of guilt or not, as relates distinctly to the fact thereby discovered, may be proved.

Admission made after removal of impression caused by inducement, threat or promise relevant.

28. If such an admission as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Admission otherwise relevant not irrelevant on certain grounds.

29. If such an admission is otherwise relevant it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such admission, and that evidence of it might be given against him.

Consideration of proved admission affecting person making it and others jointly under trial for same offence.

30. When more persons than one are being tried jointly for the same offence, and an admission made by one of such persons affecting himself and some other such person is proved, the Court may take into consideration such admission as against such other person as well as against the person who makes such admission.

Illustrations.

(*a.*) *A and B are jointly tried for the murder of C. It is proved that A said,—"B and I murdered C;" the Court may consider the effect of this admission as against B.*

(*b.*) *A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, —"A and I murdered C."*

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

When admissions are conclusive proof.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Statements by persons who cannot be called as witnesses.

When statement by person who is dead or cannot be found, &c., is relevant.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without any amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases :—

Statement as to cause of death.

(1.) When the statement is made by a person, as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

Statements in course of business.

(2.) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty ; or of acknowledgements written or signed by him of the receipt of money, goods, securities or property of any kind ; or of documents used in commerce written or

signed by him, or of the date of a letter or other document ussually dated, written or signed by him.

Statements against interest.

(3.) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

Matters of general interest.

(4.) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

As to relationship.

(5.) When the statement relates to the existence of any relationship between persons as to whose relationship the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

Recitals as to relationship in deeds.

(6.) When the statement relates to the existence of any relationship between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

Statements in deeds.

(7.) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section thirteen clause (*a.*)

(8.) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(*a.*) *The question is, whether A was murdered by B ; or*

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B.: or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death referring respectively to the murder, the rape, and the actionable wrong under consideration are relevant facts.

(*b.*) *The question is as to the date of A's birth.*

An entry in the diary of a deceased Surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(*c.*) *The question is, whether A was in Calcutta on a given day.*

A statement in the diary of a deceased solicitor, regularly kept in the course of business that, on a given day, the solicitor attended A at a place mentioned in Calcutta for the purpose of conferring with him upon specified business, is a relevant fact.

(*d.*) *The question is, whether a ship sailed from Bombay harbour on a given day.*

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(*e.*) *The question is, whether rent was paid to A for certain land.*

A letter from a deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(*f.*) *The question is, whether A and B were legally married.*

The statement of a deceased clergyman that he maried them under such circumstances that the celebration would be a crime, is relevant.

(*g.*) *The question is, whether A, a person who cannot be found wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.*

(*h.*) *The question is, what was the cause of the wreck of a ship.*

A protest made by the captain, whose attendance cannot be procured, is a relevant fact.

(*i.*) *The question is, whether a given road is a public way.*

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(*j.*) *The question is, what was the price of grain on a certain day in a particular market. A statement of the price made by*

a deceased banya in the ordinary course of his business, is a relevant fact.

(*k.*) *The question is, whether A, who is dead, was the father of B.*

A statement by A that B was his son, is a relevant fact.

(*l.*) *The question is, what was the date of the birth of A.*

A letter from A's deceased father to a friend announcing the birth of A on a given day, is a relevant fact.

(*m.*) *The question is, whether, and when, A and B were married.*

An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A at a given date, is a relevant fact.

(*n.*) *B sues A for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.*

Evidence in a former judicial proceeding when relevant.

33. Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving the truth of the facts which it states in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable :

Provided that the proceeding was between the same parties or their representatives in interest ; that the adverse party in the first proceeding had the right and opportunity to cross-examine ; that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or enquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Statements made under special circumstances.

Entries in books of account.

34. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court

has to inquire, but such statements shall not alone be sufficient evidence to chargeany person with liability.

Illustration.

A sues B for Rs. 1,000, *and shows entries in his account books showing A to be indebted to him to this amount. The entries are relevant, but are not sufficient without other evidence to prove the debt.*

Entry in public record, made in performance of duty enjoined by law when relevant.

35. An entry in any public or other official book, register or record, stating a relevant fact and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

Maps and plans when relevant.

36. Statements of relevant facts made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Statement as to fact of public nature contained in any Act or Notification of Government, when relevant.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament or in any Act of the Governor General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India* or in the Gazette of any Local Government, or in any printed paper purporting to be the *London Gazette* or the Government Gazette of any colony or possession of the Queen, is a relevant fact.

Statements in law-books.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

How much of a Statement is to be proved.

What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

Judgments of Courts of Justice when relevant.

Previous judgments relevant to bar a second suit or trial.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or of holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

Judgments in probate, &c., jurisdiction.

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, Admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such order, judgment or decree is conclusive proof that any legal character which it confers accrued at the time when such judgment, order or decree came into operation; that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment declares it to have accrued to that person; that any legal character which it takes away from any such person ceased at the time from which such judgment declared that it had ceased or should cease; and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment declares that it had been or should be his property.

Judgments, order or decree between third parties when irrelevant and when not.

42. Judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry ; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass in the same place, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists

What judgments, &c., not relevant.

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the fact that such a judgment, order or decree existed, is relevant under some other provision of this Act.

Illustrations.

(*a.*) *A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.*

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(*b.*) *A prosecutes B for adultery with C, A's wife.*

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(*c.*) *A prosecutes B for stealing a cow from him. B is convicted.*

A, afterwards, sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(*d.*) *A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.*

The existence of the judgment is relevant, as showing motive for a crime.

Fraud, collusion and incompetency of Court may be proved.

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under sections 40, 41, or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

OPINIONS OF THIRD PERSONS WHEN RELEVANT.

Opinions of experts.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science or art, are relevant facts.

Such persons are called experts.

Illustrations.

(*a.*) *The question is, whether the death of A was caused by poison.*

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(*b.*) *The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.*

The opinion of experts upon the question whether the symptoms exhibited by A commonly show unsoundnees of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c.*) *The question is whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.*

The opinions of experts on the question whether the two documents were written by the same or by different persons are relevant.

Facts bearing upon opinions of experts.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(*a.*) *The question is, whether A was poisoned by a certain poison.*

The fact that other persons who were poisoned by that poison exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b.*) *The question is, whether an obstruction to a harbour is caused by a certain sea wall.*

The fact that other harbours similarly situated in other respects, but where there were no such sea walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting.

47. When the Court has to form an opinion as to the persons by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwiting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C, nor D ever saw A write.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Opinion as to existence of right or custom, when relevant.

Explanation.—The expression 'general custom or right' includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

49. When the Court has to form an opinion as to the usages and tenets of any body of men or family, the constitution and government of any religious or charitable foundation, or the meaning of words or terms used in particular districts or by particular classes of people, the opinions of the person having special means of knowledge thereon, are relevant facts.

Opinions as to usages tenets, &c., when relevant.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinions shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under Section 494, 495, 497 or 498 of the Indian Penal Code.

Opinion on relationship when relevant.

Illustrations.

(*a.*) *The question is whether A and B were married.*

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(*b.*) *The question is whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.*

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Grounds of opinion when relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

In civil cases, character to prove conduct imputed irrelevant.

52. In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

53. In criminal proceedings, the fact that the person accused is of a good character, is relevant.

Previous conviction in criminal trials relevant, but not previous bad character, except in reply.

54. In criminal proceedings, the fact that the accused person has been previously convicted of any offence is relevant; but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character in which case it becomes relevant.

Explanation.—This section does not apply to cases in which the bad chacacter of any person is itself a fact in issue.

Character as affecting damages.

55. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.—In sections 52, 53, 54 and 55, the word 'character' includes both reputation and disposition; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation and disposition were shown.

PART II.

ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

No evidence required of relevant fact judicially noticed.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice.

57. The Court shall take judicial notice of the following facts :—

(1.) All laws or rules having the force of law now or heretofore in force or hereafter to be in force in any part of British India ;

(2.) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by such Parliament to be judicially noticed :

(3.) Articles of War for Her Majesty's Army or Navy :

(4.) The course of proceeding of the said Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils' Act, or any other law for the time being relating thereto :

Explanation.—The word 'Parliament' in clauses (2) and (4) includes (1)—The Parliament of the United Kingdom of Great Britain and Ireland; (2)—The Parliament of Great Britain; (3)—The Parliament of England; (4)—The Parliament of Scotland, and (5)—The Parliament of Ireland.

5. The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland :

(6.) All seals of which English Courts would take judicial notice: the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor General or any Local Government in Council: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having force of law in British India :

(7.) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official Gazette of any Local Government :

(8.) The existence, title, and national flag of every State or Sovereign recognized by the British Crown :

(9.) The divisions of time, the geographical divisions of the world and public festivals, fasts and holidays notified in the official Gazette :

(10.) The territories under the dominion of the British Crown :

(11.) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons ;

(12.) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and

of all advocates, attornies, proctors, vakíls, pleaders and other persons authorized by law to appear or act before it :

(13.) The rule of the road.

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Chapter IV.—Of Oral Evidence.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases, whatever, be direct; that is to say—

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it.

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it.

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner.

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds :

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a

witness without an amount of delay or expense which the Court regards as unreasonable ;

Provided, also, that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

Chapter V.—Of Documentary Evidence.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced, for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest ; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possesion of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

(1.) Certified copies given under the provisions hereinafter contained.

(2.) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies.

(3.) Copies made from or compared with the original.

(4.) Counterparts of documents as against the parties who did not execute them.

(5.) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a.*) *A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.*

(*b.*) *A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.*

(*c.*) *A copy transcribed from a copy. but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.*

(*d.*) *Neither an oral account of a copy compared with the original, or an oral account of a photograph or machine-copy of the original, is seeondary evidence of the original.*

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

(*a.*) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of or not subject to the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it.

(*b.*) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest.

(*c.*) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time.

(*d.*) When the original is of such a nature as not to be easily moveable.

(*e.*) When the original is a public document within the meaning of section 74.

(*f.*) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence.

(*g.*) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In case (*a*), (*c*) and (*d*), any secondary evidence of the contents of the document is admissible.

In case (*b*), the written admission is admissible.

In case (*e*) or (*f*), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (*g*), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Rules as to notice to produce.

66. Secondary evidence of the contents of the documents referred to in section 65 (*a*) shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :—

(1.) When the document to be proved is itself a notice.

(2.) When from the nature of the case, the adverse party must know that he will be required to produce it.

(3.) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force.

(4.) When the adverse party or his agent has the original in Court.

(5.) When the adverse party or his agent admitted the loss of the document.

Proof of signature and handwriting of person alleged to have signed or written document produced.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of execution of document required by law to be attested.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

Proof where no attesting witness found.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Admission by party of execution.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of document not required by law to be attested.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Comparison of handwritings.

73. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

PUBLIC DOCUMENTS.

Public documents.

74. The following documents are public documents :—

1. Documents forming the Acts, or records of the Acts—
   (1) of the sovereign aauthority,
   (2) of official bodies and tribunals; and
   (3) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

Private documents.

75. All other documents are private.

Certified copies of public documents.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who by the ordinary course of official duty is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Production of such copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. The following public documents may be proved as follows :—

(1.) Acts, orders or notifications of the Executive Government of British India in any of its departments, of any Local Government, or any department of any Local Government, by

the records of the departments certified by the heads of those departments respectively, or by any document purporting to be printed by order of any such Government :

(2.) The proceedings of the legislatures, by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government :

(3.) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Majesty's Government, by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer :

(4.) The Acts of the executive or the proceedings of the legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council :

(5.) The proceedings of a municipal body in British India, by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body :

(6.) Public documents of any other class in a foreign country, by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to Documents.

Presumption as to genuineness of certified copies.

79. The Court shall presume every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India or by any officer in any Native State in alliance with Her Majesty who is duly authorised thereto by the Governor General in Council to be genuine : Provided that such paper is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer, by

whom any such paper purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Presumptions on production of record of evidence.

80. Whenever any document is produced before any Court purporting to be a record or memorandum of the evidence or of any part of the evidence given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence, or to be a statement or confession by any prisoner or accused person taken in accordance with law and purporting to be signed by any Judge or Magistrate or by any such officer as aforesaid, the Court shall presume that the document is genuine; that any statements as to the circumstances under which it was taken purporting to be made by the person signing it are true, and that such evidence, statement or confession was duly taken.

Presumption as to Gazettes.

81. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to documents admissible in England without proof of seal or signature.

82. When any document is produced to any Court purporting to be a document which by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held at the time when he signed it the judicial or official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purpose of any cause must be proved to be accurate.

Proof of maps made for purposes of any cause.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to collections of laws and reports of decisions.

85. The Court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

Presumption as to powers of attorney.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India resident in in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to certified copies of foreign judicial records.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to books and maps.

88. The Court may presume that a message forwarded from a telegraph office to the person to whom such message purports to be addressed corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the

Presumption as to photographs, machine copies and telegraphic messages.

Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution &c., of documents not produced.

89. The Court shall presume that every document called for and not produced after notice to produce was attested, stamped and executed in the manner required by law.

Documents thirty years old.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which and under the care of the person with whom they would naturally be ; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(*a.*) *A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.*

(*b.*) *A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.*

(*c.*) *A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.*

Chapter IV.—Of the Exclusion of Oral by Documentary Evidence.

Evidence of terms of written contract.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or

other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, writing by which he is appointed need not be proved.

Exception 2.—Wills under the Indian Succession Act may be proved by the Probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or disposition of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement in any document whatever of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence of the same fact.

Illustrations.

(*a.*) *If a contract be contained in several letters, all the letters in which it is contained must be proved.*

(*b.*) *If a contract is contained in a bill of exchange, the bill of exchange must be proved.*

(*c.*) *If a bill of exchange is drawn in a set of three, one only need be proved.*

(*d.*) *A contracts in writing with B for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.*

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(*e.*) *A gives B a receipt for money paid by B.*
Oral evidence is offered of the payment.
The evidence is admissible.

Exclusion of evidence of oral agreement.

92. When the term of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of of a document, have been proved according to the last section, no evidence of any oral agreement or state-

ment shall be admitted as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or substracting from, its terms :

Proviso (1.)—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2.)—The existence of any separate oral agreement on any matter on which a document is silent and not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3.)—The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4.)—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, may be proved except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5.)—Any usage or custom by which incidents, not expressly mentioned in any contract, are usually annexed to contracts of that description, may be proved : Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6.)—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(*a.*) *A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.*

(*b.*) *A agrees absolutely in writing to pay B, Rs.* 1,000 *on the* 1st *March* 1870. *The fact that, at the same time, an oral agreement was made that the money should not be paid till the* 31st *March, cannot be proved.*

(c.) An estate called 'the Rampore tea estate' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed, cannot be proved.

(d.) A enters into a contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e.) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f.) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g.) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: 'Bought of A a horse for Rs. 500.' B may prove the verbal warranty.

(h.) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs. 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement drawn up by an attorney is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(i.) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money In a suit for the amount, A may prove this.

(j.) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(*a.*) *A agrees in writing to sell a horse to B for 'Rs.* 1,000 *or Rs.* 1,500.'

Evidence cannot be given to show which price was to be given.

(*b.*) *A deed contains blanks. Evidence cannot be given of fact which would show how they were meant to be filled.*

Exclusion of evidence against application of document to existing facts.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B by deed 'my estate at Rampore containing 100 *bígás.' A has an estate at Rampore containing* 100 *bígás. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.*

Evidence as to document unmeaning in reference to existing facts.

95. When language used in a document is plain in itself but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B by deed 'my house in Calcutta.'

A had no house in Calcutta, but it appears that he had a house at Howrah, of which A had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

Evidence as to application of language which can apply to one only of several persons.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations.

(*a.*) *A agrees to sell to B for Rs.* 1,000 "*my white horse.*" *A has two white horses. Evidence may be given of facts which show which of them was meant.*

(b.) A agrees to accompany B to Hyderabad. Evidence may be given of facts showing whether Hyderabad in the Deccan of Hyderabad in Scind was meant.

Evidence as to application of language to one of two sets of facts to neither of which the whole correctly apply.

97. When the language used applies partly to one set of existing facts and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration.

A agrees to sell to B 'my land at X' in the occupation of Y. A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

Evidence as to meaning of illegible characters &c.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of abbreviations and of words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B, 'all my mods.' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Who may give evidence as to matter to which document relates.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the term of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C if it affected his interests.

Saving of provisions of Indian Succession Act relating to wills.

100. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865,) as to the construction of wills.

PART III.

PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

Burden of proof.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(*a.*) *A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.*

A must prove that B has committed the crime.

(*b.*) *A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts and which B denies to be true.*

A must prove the existence of those facts.

General burden of proof.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a.*) *A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.*

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(*b.*) *A sues B for money due on a bond.*

The execution of the bond is not disputed, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

Burden of proof as to particular fact.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

(*a.*) *A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.*

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations.

(*a.*) *A wishes to prove a dying declaration by B. A must prove B's death.*

(*b.*) *A wishes to prove, by secondary evidence, the contents of a lost document.*

A must prove that the document has been lost.

Burden of establishing general exceptions.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(*a.*) *A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.*

The burden of proof is on A.

(*b.*) *A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.*

The burden of proof is on A.

(*c.*) *Section* 325 *of the Penal Code provides that whoever, except in the case provided for by section* 335, *voluntarily causes grievous hurt, shall be subject to certain punishments.*

A is charged with voluntarily causing hurt under section 325.

The burden of proving the circumstances, bringing the case under section 335, *lies on the prisoner.*

Burden of proving fact especially within knowledge.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(*a.*) *When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.*

(*b.*) *A is charged with travelling in a railway without a ticket the burden of proving that he had a ticket is on him.*

Burden of proof as to continuance of life.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within. thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proof as to death.

108. When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is on the person who affirms it.

Burden of proof as to partnership, tenancy and agency.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to ownership.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(*a.*) *The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.*

(*b.*) *The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father*

Birth during marriage, conclusive proof of legitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution,

the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Proof of cession of territory.

113 A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Court may presume existence of certain facts.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(a.) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.

(b.) That an accomplice is unworthy of credit, unless he is corroborated in material particulars.

(c.) That a bill of exchange accepted or endorsed, was accepted or endorsed, for good consideration.

(d.) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence.

(e.) That judicial and official acts have been regularly performed.

(f.) That the common course of business has been followed in particular cases.

(g.) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

(h.) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him.

(i.) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following in considering whether such maxims do or do not apply to the particular case before them.

As to illustration (a.)—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business.

As to illustration (b.)—A, a personof the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself.

As to illustration (b.)—A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable.

As to illustration (c.)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence.

As to illustration (d.)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course.

As to illustration (e.)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances.

As to illustratian (f.)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances.

As to illustration (g.)—A man refuses to produce a document which would bear on a contract of small importance on which he he is sued, but which might also injure the feelings and reputation of his family.

As to illustration (h.)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked.

As to illustration (i)—A bond is in possession of the obligor but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.—ESTOPPEL.

Estoppel.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his respresentative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppel of acceptor of bill of exchange, bailee or licensee.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it, nor shall any bailee or licensee be permitted to deny that his bailor or licensor had at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1).—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2).—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.—OF WITNESSES.

Who may testify.

118. All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to

them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other case of the same kind.

Explanation.—A lunatic is not incompetent to testify unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Dumb witnesses.

119. A witness, who is unable to speak, may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs ; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Married person in Civil and Criminal Proceedings.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Judges and Magistrates.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate ; but he may be examined as to other matters which occured in his presence whilst he was so acting.

Illustrations.

(*a.*) *A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a Superior Court.*

(*b.*) *A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the Superior Court.*

(*c.*) *A is accused before the Court of Session of attempting to murder a Police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.*

Communications during marriage.

122. No person, who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married nor shall

he be permitted to disclose any such communication, unless the person who made it or his representative in interest consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of State.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Official communications.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Information as to commission of offences.

125. No Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence.

Professional communication.

126. No barrister, attorney, pleader or vakíl, at any time, shall be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakíl by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment :

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any criminal purpose ;

(2) Any fact observed by any barrister, pleader, attorney or vakíl in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment ;

It is immaterial whether the attention of such barrister, attorney or vakíl was or was not directed to such fact by or on behalf of his client.

Explanation—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(*a.*) *A, a client, says to B, an attorney,—'I have committed forgery, and I wish you to defend me.'*

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b.*) *A, a client, says to B an attorney,—'I wish to obtain possession of property by the use of a forged deed on which I request you to sue.'*

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c.*) *A being charged with embezzlement retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.*

This being a fact observed by B in the course of his employment showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

Section 126 to apply to interpreters, &c.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers pleaders, attorneys and vakils.

Waiver of privilege if party volunteers evidence.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and if any party to a suit or proceeding calls any such barrister, attorney or vakíl as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakíl on matters which, but for such question, he would not be at liberty to disclose.

Confidential communication with legal advisers.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Production of witness' title-deeds.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

Production of documents belonging to another person.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose such witness to a penalty or forfeiture of any kind :

Witness bound to answer criminating questions.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Proviso.

133. An accomplice shall be a competent witness against an accused person ; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Accomplice.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

Number of witnesses.

Chapter X.—Of the Examination of Witnesses.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to Civil and Criminal Procedure respectively, and in the absence of any such law, by the discretion of the Court.

Order of production and examination of witnesses.

Judge to decide as to relevancy of facts.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may in his discretion either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a.*) *It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section thirty-two.*

The fact that the person is dead must be proved by the person proposing to prove the statement before evidence is given of the statement.

(*b.*) *It is proposed to prove by a copy the contents of a document said to be lost.*

The fact that the original is lost must be proved by the person proposing to produce the copy before the copy is produced.

(*c.*) *A is accused of receiving stolen property knowing it to have been stolen.*

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may in its discretion either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(*d.*) *It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact A can be regarded as the cause or effect of the fact.*

in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Order of examinations. Direction of examination.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination ; and if new matter is by permission of the Court introduced in re-examination, the adverse party may further cross-examine upon that matter.

Cross-examination of person called to produce a document.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

Leading questions.

141. Any question suggesting the answer which the person who puts it wishes or expects to receive, is called a leading question.

When they must not be asked.

142 Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

143. Leading questions may be asked in cross-examination.

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property as to which he is giving evidence was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Evidence as to matters in writing.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D—'B wrote a letter accusing me of theft, and I will be revenged on him.' This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Cross-examination as to previous statements in writing.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend

Questions lawful in cross-examination.

(1). to test his veracity;

(2). to discover who he is and what is his position in life, or

(3). to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

When witness to be compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its direction, the Court shall have regard to the following considerations :—

Court to decide when question shall be asked and when witness compelled to answer.

(1.) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies.

(2.) Such questions are improper if the imputation which they convey relates to matters so remote in time or of such a character that the truth of the imputation would not affect or would affect in a slight degree the opinion of the Court as to the credibility of the witness on the matter to which he testifies.

(3.) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness' character and the importance of his evidence.

(4.) The Court may, if it sees fit, draw, from the witness' refusal to answer, the inference that the answer if given would be unfavourable.

149. No such question as is referred to in section 148, ought to be asked unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Question not to be asked without reasonable grounds.

Illustrations.

(*a.*) *A barrister is instructed by an attorney or vakil that an important witness is a dacoit. This is a reasonable ground for asking the witness whether he is a dacoit.*

(*b.*) *A pleader is informed by a person in Court that an important witness is a dacoit. The informant on being questioned by the pleader gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dacoit.*

(*c.*) *A witness, of whom nothing whatever is known, is asked at random whether he is a dacoit. There are here no reasonable grounds for the question.*

(*d.*) *A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dacoit.*

Procedure of Court in case of question being asked without reasonable grounds.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakíl or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakíl, or attorney is subject in the exercise of his profession.

Indecent and scandalous questions.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(*a.*) *A claim against an underwriter is resisted on the ground of fraud.*

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b.*) *A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.*

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c.*) *A affirms that on a certain day he saw B at Lahore.*

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d.*) *A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.*

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Cross-examination by party producing witness.

154. The Court may in its discretion permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him :—

(1.) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit.

(2.) By proof that the witness has been bribed or has had the offer of a bribe, or has received any other corrupt inducement to give his evidence.

(3.) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

(4.) When a man is prosecuted for rape or an attempt to ravish it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a.*) *A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B.*

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(*b.*) *A is indicted for the murder of B.*

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Corroborative facts are relevant.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances if proved would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Evidence in reply to evidence of former inconsistent statements.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

158. Whenever any statements, relevant under section 32 or 33 is proved, all matters may be proved either in order

to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Statement under Section 32 or 33.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

Refreshing memory.

The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

Court may permit a copy of document to be used to refresh memory.

An expert may refresh his memory by reference to professional treaties.

160. A witness may also testify to facts mentioned in any such document, as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Testimony to facts stated in document mentioned in section 159.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Any such writing as is mentioned in the last two sections must be produced and shown to the adverse party if he requires it, who may, if he pleases, cross-examine the witness thereupon.

Producing writing used to refresh memory.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to

Production of documents.

its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence, and if the interpreter disobeys such direction, he shall be held to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

Giving as evidence of document called for and produced on notice.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Giving as evidence of document production of which was refused on notice.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Judge's power to put questions or order production.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases in any form at any time of any witness or of the parties about any fact relevant or irrelevant ; and may order the production of any document or thing ; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, cross-examine any witness upon any answer given in reply to any such question :

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved.

Provided also that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under section 122, 123, 124, 125, 127, 128, 129, 130, or 131 if the question were asked or the document were called for by the adverse party ; nor shall the Judge ask any question which it would be improper for any other person to ask under sections 148 and 149 ; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Power of jury or assessors to put questions.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

Chapter XI.—Of Improper Admission and Rejection of Evidence.

No new trial for rejection or improper reception of evidence.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that if the rejected evidence had been received, it ought not to have varied the decision.

SCHEDULE.

Number and year.	Title.	Extent of repeal.
Stat. 26 Geo. III, C. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty (intituled, An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a court of judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies,) as requires the servants of the East India Company to deliver inventories of their estates and effects; for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section thirty-eight so far as it relates to Courts of Justice in the East Indies.
Stat. 14 & 15 Vic.	To amend the Law of Evidence.	Section eleven and so much of section nineteen as relates to British India.
Act XV of 1852	To amend the Law of Evidence.	The whole Act.
Act XIX of 1853	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section nineteen.
Act II of 1855	For the further improvement of the Law of Evidence.	The whole Act.
Act XXV of 1861	For simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section two hundred and thirty-seven.
Act I of 1868	The General Clauses Act, 1868.	Section seven.

INDEX.

Accomplice is a competent witness, sec. 133.
Account Books, entries in, when evidence, sec. 34.
Admissions, when evidence, secs. 17, 31.
" by parties interested in subject-matter, sec. 18.
" by persons whose position must be proved as against party to suit, sec. 19.
" by persons expressly referred to by parties to suit, sec. 20.
" against or in behalf of persons conceived, relevance of, sec. 21.
" oral, as to contents of documents, sec. 22.
" in civil cases, when relevant, sec. 23.
" of crime, caused by inducement of threat or promise, irrelevant, sec. 24.
" relevant, if made after removal of impression caused by inducement, threat or promise, sec. 28.
" when conclusive proof, sec. 31.
" of a party to an attested document is sufficient proof of its execution, sec. 70.
Admiralty Jurisdiction, judgments in, when relevant, sec. 41.
Agency, burden of proof as to, sec. 109
Affidavits, Act not applicable to, sec. 1.
Ambiguous language in a document may not be explained or amended by evidence, sec. 93.
Annoying questions, Court shall forbid, sec. 152.
Arbitrator, Act not applicable to proceedings before, sec. 1.
Assessors may put questions to witness by leave of Court, sec. 166.
Attested Document, execution of, to be proved, sec. 68.
" " handwriting of one witness at least to an, to be proved, sec. 69.
" " admission of a party to an, is sufficient proof of its execution, sec. 70.
" " not required by law to be attested, to be proved as if it was unaltered, sec. 72.
Bailee, estoppel of, sec. 117.
Bill of Exchange, estoppel of acceptor of, sec. 117
Bodily feeling, facts showing existence of, are relevant, sec. 14.
Books and Maps, Court may presume general accuracy of, sec. 87.
Burden of Proof, secs. 101, 102.
" of proof as to particular fact, sec. 103.
" of proving fact to be proved to make evidence admissible, sec. 104.
" of establishing general exceptions, sec. 105.
" of proving fact especially within knowledge, sec. 106.
Burden of proof as to continuance of life, sec. 107.
" " as to death, sec. 108.
" " as to partnership, tenancy and agency, sec. 109.
" " as to ownership, sec. 110.
Certain public documents how to be proved, sec. 78.
Certified copies of public documents to be given to parties demanding the same on payment of the legal fees, sec. 76.
" " of public documents to be produced as proof of the contents of such, or parts of such, sec. 77.
Certified copies of foreign judicial records, Court may presume genuineness of, sec 86.
Cession of territory, proof of, sec. 113.
Character when relevant, sec. 52, clause (55).
" to prove conduct imputed, in civil cases is irrelevant, sec. 52.
" previous good, in criminal cases, is relevant, sec. 53.
" previous bad, in criminal trial, is irrelevant, sec. 54.
" affecting damages in civil cases is relevant, sec. 55.
" witness to, may be cross-examined and re-examined, sec. 104.
Civil cases, admissions in, when relevant, sec. 23.
" " in character to prove conduct imputed is irrelevant, sec. 52.
" " in character to prove conduct imputed is relevant, sec. 50.
" " in character affecting damages is relevant, sec. 55.

Common design, things, said or done in reference to, are relevant, sec. 10.
Communications during marriage protected from disclosure, sec. 122.
Confessions to Police not evidence, secs. 25, 26.
„ discoveries made by reason of, may be used in evidence, sec. 27.
Confidential communications with legal advisers, sec. 129.
Contents of documents, oral admission as to, when relevant, sec. 22.
Conviction, previous, in criminal trials is relevant, sec. 54.
Court, definition of, sec. 3.
„ may presume existence of certain facts, sec. 114.
„ to decide when a question shall be put and when a witness shall be compelled to answer, sec. 148.
„ shall report circumstance of question being put to a witness without reasonable grounds, sec. 150.
„ Martial, Act applicable to proceedings in, sec. 1.
Corroborative facts, relevancy of, sec. 1.
Criminal cases in, previous good character is relevant, sec. 53.
„ trials, previous conviction in, is relevant, sec. 54.
Criminating Questions, witness bound to answer, sec. 132.
„ „ „ cannot be prosecuted for answering, sec. 132.
Cross-examination, sec. 137.
„ what questions are lawful in, sec. 146.
„ of a witness by the party producing him, sec. 154.
Damages, character affecting in civil cases is relevant, sec. 55.
Death, burden of proof as to, sec. 108.
Decrees, between third parties when irrelevant, sec. 42.
„ nature of, which are irrelevant, sec. 43.
„ obtaining of, by fraud or collusion, or incompetency of Court, sec. 44.
Direction of re-examinations, sec. 138.
Document, definition of, sec. 3.
„ oral admission as to contents of, sec. 22.
„ contents of, to be proved by primary or secondary evidence, sec. 61.
„ description of, meant as secondary evidence, sec. 63.
„ to be proved by primary evidence, sec. 64.
„ may be proved by secondary evidence in certain cases, sec. 65.
„ contents of, secondary evidence regarding, when to be given, sec. 66.
„ signature or handwriting in, to be proved, sec. 67.
„ (attested) execution of, to be proved, sec. 68.
„ „ handwriting of one witness at least to an, to be proved, sec. 69.
„ „ admission of a party to an, is sufficient proof of its execution, sec. 70.
„ execution of a, to be proved by other evidence when execution is denied by an attesting witness, sec. 71.
„ attested, not required by law to be attested, to be proved as if it was unattested sec. 72.
„ signature, writing, or seal in a, to be proved, to be compared with such in one already proved, sec. 73.
„ (public) what documents are to be considered as, sec. 74.
„ (private) all documents not described in section 74 are, sec. 75.
„ „ certified copy of, to be given to parties demanding the same on payment of the legal fees, sec. 76.
„ (public,) certified copy of, to be produced as proof of the contents of such, or parts of such, sec. 77.
„ (public), certain, how to be proved, sec. 78.
„ certified copy of, presumption of genuineness of, sec. 79.
„ presumption of genuineness of a, being a record or memorandum of evidence, sec. 80.
„ admissible in England without proof of seal or signature, Court shall presume genuineness of, sec. 82.
„ thirty years old, Court may presume genuineness of, sec. 90.
„ persons not parties to a, may give evidence to show a contemporaneous agreement varying its terms, sec. 99.
„ person merely producing a, cannot be cross-examined, sec. 139.
„ when it may be translated, sec. 162.
Documentary Evidence, secs. 61, 73.
Dumb Witnesses, sec. 119.

England, Court shall presume genuineness of document admissible in, without proof of seal or signature, sec. 82.
Entries, in books of account when evidence, sec. 34.
,, in public records when relevant, sec. 35.
Estoppel, sec. 115.
,, of Tenant, sec. 116.
,, of acceptor of bill of exchange, bailee or license, sec. 117.
Examination in chief, sec 137.
Exclusion of oral evidence as to terms of a written contract, sec. 92.
Execution of a document to be proved by other evidence when execution is denied by an attesting witness, sec. 71.
,, (due) of documents not produced, presumption as to, sec. 89.
Existence of right or custom when relevant, sec. 48.
,, of certain facts, Court may presume, sec. 114.
Experts, opinions of, sec. 45.
,, facts bearing upon opinions of, sec. 46.
Evidence, meaning of, sec. 3.
,, may be given of facts in issue and relevant facts, sec. 5.
,, facts forming part of same transaction are, sec. 6.
,, may be given of facts tending to determine amount of damages, sec. 12.
,, in a former judicial proceeding when relevant, sec. 33.
,, how much of, to be given when statement forms part of a conversation, document, book, or series of letters or papers, sec. 39.
,, of relevant fact, when judicially noticed, not necessary, sec. 56.
,, oral, description of facts to be proved by, sec. 59.
,, oral, in all cases, to be direct, sec. 60.
,, contents of documents to be proved by primary or secondary, sec. 61.
,, primary, meaning of, sec. 62.
,, secondary, meaning of, sec. 63.
,, primary, documents to be proved by, sec. 64.
,, secondary, cases in which may be given in relation to documents, sec. 65.
,, secondary, of contents of documents when to be given, sec. 66.
,, of terms of written contract, sec. 91.
,, may not be given to explain or amend ambiguous language in a document, sec. 93.
,, against application of document to existing facts, exclusion of, sec. 94.
,, may be given to explain unmeaning language in a document in reference to existing facts, sec. 95.
,, may be given as to application of language which can apply to one only of several persons, sec. 96.
,, may be given as to application of language to one of the two sets of facts to neither of which the whole correctly applies, sec. 97.
,, may be given to explain the meaning of unintelligible or illegible characters, sec. 98.
,, as to affairs of State, 123.
,, ,, matters in writing, sec. 144.
,, to contradict answers to questions testing veracity shall be excluded, sec. 153.
,, in reply to evidence of former inconsistent statements, 157.
Facts, definition of, sec. 3.
,, in issue, definition of, sec. 3.
,, proved, disproved, and not proved, sec. 3.
,, in issue, evidence may be given of, sec. 5.
,, forming part of same transaction are relevant, sec. 6.
,, in issue, facts which are occasion, cause, or effect of, are relevant, sec. 7.
,, showing motive, preparation, or subsequent conduct, sec. 8.
,, not otherwise relevant become relevant, sec. 11.
,, tending to determine amount of damages are relevant, sec. 12.
,, relevant when right or custom is in question, sec. 13.
,, not otherwise relevant when relevant, sec. 46.
,, bearing upon opinions of expects, sec. 46.
,, relevant, evidence of, when judicially noticed, not necessary, sec. 56.
,, description of, requiring judicial notice, sec. 57.
,, admitted, proof of, unnecessary, sec. 58.
,, description of, to be proved by oral evidence, sec. 59.
Foreign judicial records, Court may presume genuineness of certified copies of, sec. 86.

Gazettes, presumption of the genuineness of documents, purporting to be, sec. 81.
General exceptions, burden of, establishing, sec. 105.
Good faith, proof of, in transactions where one party is in relation of active confidence, sec. 111.
Grounds of opinion relevant when opinion is relevant, sec. 51.
Handwriting of one witness at least to an attested document to be proved, sec. 69.
Illegible characters, evidence may be given to explain, sec. 98.
Impeachment of the credit of a witness, sec. 155
Improper admission or rejection of evidence to be no ground of itself for a new trial or reversal of decision passed, sec. 167.
Indecent questions, Court may forbid, sec. 151.
Indian Succession Act, provisions of, relating to Wills not affected by this Act, sec. 100.
Information as to commission of offences, sec. 125.
Insolventy Jurisdiction, judgment in, when relevant, sec. 41.
Insulting questions, Court shall forbid, sec. 152.
Judicial Proceeding, Act applicable to every, sec. 1.
„ „ evidence in a former, when relevant, sec. 33.
Judicial notice, description of facts requiring, sec. 57.
Judge not compelled to answer questions as to his conduct in Court, sec. 121.
„ to decide as to relevancy of facts, sec. 136.
Judgments, previous, relevancy of, to bar a second suit or trial, sec. 40.
„ in probate, matrimonial, admiralty, or insolvency jurisdiction when relevant, sec. 41.
„ between third parties when irrelevant, sec. 42.
„ nature of, which are irrelevant, sec. 43.
„ obtaining of, by fraud or collusion, or incompetency of Court, sec. 44.
Jurisdiction, probate, matrimonial, admiralty, or insolvency, judgment in, when relevant, sec. 41.
Jurors may put questions to witness by leave of Court, sec. 166.
Language in a document which can apply to one only of several persons, evidence may be given as to application of, sec. 96.
Laws printed or published under Government authority, Court shall presume genuineness of, sec. 84.
Leading questions, definition of, sec. 141.
„ „ when they must not be put, sec. 142.
„ „ when they may be put, sec. 143.
Legal advisers, confidential communications with, sec. 129.
Legitimacy, birth during marriage conclusive proof of, sec. 112.
Licensee, estoppel of, sec. 117.
Life, burden of proof as to continuance of, sec. 107.
Machine copies, Court may presume general accuracy of, sec. 88.
Magistrate not compelled to answer questions as to his conduct in court, sec. 121.
Maps and plans when relevant, sec. 36.
Maps or plans made by Government authority, Court shall presume accuracy of, sec. 83.
„ „ for the purpose of a cause must be proved to be accurate, sec. 83.
Married person competent witness in a suit against the husband or wife of such person, sec. 120.
Matrimonial Jurisdiction, judgments in, when relevant, sec. 41.
Memory, how witness may refresh, sec. 159.
Number of witnesses in a case, sec. 134.
Official communications protected from disclosure, sec. 124.
Opinion of expert, sec. 45.
„ as to handwriting of a person by whom a document is supposed to be written or signed is a relevant fact, sec. 47.
„ of person having special knowledge of usages and tenets is relevant, sec. 49.
„ in relationship when relevant, sec. 50.
„ grounds of, when relevant, sec. 51.
Oral evidence, description of facts to be proved by, sec. 59.
„ „ in all cases, to be direct, sec. 60.
„ „ as to terms of written contract shall not be admitted, sec. 92.
Order of production and examination of witnesses, sec. 135.
„ of examinations, sec. 138.
„ between third parties when irrelevant, sec 42.
„ nature of, which is irrelevant, sec. 43.
„ obtaining of, by fraud or collusion, or incompetency of Court, sec. 44.
Ownership, burden of proof as to, sec. 110.
Partnership, burden of proof as to, sec. 109.

Person merely producing a document cannot be cross-examined, sec. 139.
Photographs, Court may presume general accuracy of, sec 88.
Powers of attorney, certain, shall be presumed by the Court to be genuine, sec. 85.
Presumption of genuineness of certified copies of documents, sec. 79.
„ of genuineness of a document being a record or memorandum of evidence, sec. 80.
„ of the genuineness of documents, purporting to be *Gazettes*, sec. 81.
„ as to due execution, &c., of documents not produced, sec. 89.
Previous good character in criminal cases is relevant, sec. 53.
„ bad character in criminal trial is irrelevant, sec. 54.
„ conviction in criminal trials is relevant, sec. 54.
„ statements in writing, witness may be cross-examined as to, 145.
Primary evidence, meaning of, sec. 62.
„ documents to be proved by, sec. 64.
Privilege, waiver of, if party volunteers evidence, sec. 128.
Private Documents, all documents not described in section 74 are, sec. 75.
Probate Jurisdiction, judgments in, when relevant, sec. 41.
Producing writing used to refresh memory, sec. 161.
Production of Title deeds, sec. 130.
„ of documents belonging to another person, sec. 131.
„ of documents, secs. 162, 165.
Professional communications protected from disclosure, sec. 126.
Proof, description of facts not requiring, secs. 56, 58.
„ of admitted facts unnecessary, sec. 58.
Public Documents, what documents are to be considered as, sec. 74.
„ „ certified copies of, to be given to parties demanding the same on payment of the legal fees, sec. 76.
„ „ certified copies of, to be produced as proof of the contents of such, or parts of such, sec. 77.
„ „ certain, how to be proved, sec. 78.
Questions not to be asked without reasonable grounds, sec. 149.
Reasonable grounds, question shall not be put to a witness without, sec. 149.
Re-examination, sec. 137.
Relationship, opinion on, when relevant, sec. 50.
Relevancy of previous judgments to bar a second suit or trial, sec. 40.
„ character, secs. 52, 55.
„ facts, Judge to decide as to, sec. 136.
Relevant facts, evidence may be given of, sec. 5.
„ „ facts necessary to explain or introduce, sec. 9.
„ „ when right or custom is in question, sec. 13.
„ question, witness shall be compelled to answer, sec. 147.
Reports of decisions printed or published by Government authority shall be presumed to be genuine, sec. 84.
Scandalous questions, Court may forbid, sec. 151.
Secondary evidence, meaning of, sec. 63.
„ „ cases in which may be given in relation to documents, sec. 65.
„ „ of contents of documents when to be given, sec. 66.
Signature or handwriting in documents to be proved, sec. 67.
„ writing, or seal in a document to be proved, to be compared with such in one already proved, sec. 73.
Special circumstances, statements made under, secs. 34, 38.
State of mind or body, facts showing existence of, are relevant, sec 14.
„ affairs, evidence as to, sec. 123.
Statement by persons who cannot be called as witnesses, sec. 32.
„ as to fact of public nature contained in any act or notification of Government when relevant, sec. 37.
„ in law-book, sec. 38.
Telegraphic Messages, Court may presume general accuracy of, sec. 88.
Tenancy, burden of proof as to, sec. 109.
Tenets, opinions of persons having special knowledge of, are relevant facts, sec. 49.
Territory, proof of cession of, sec. 113.
Title-deeds, production of, sec. 130.
Translation of documents by translator appointed by Court, sec 162.
Unintelligible characters, evidence may be given to explain, sec. 98.

Unmeaning language in a document, evidence may be given to explain, sec. 95.
Usages, opinions of persons having special knowledge of, are relevant facts, sec. 49.
Wills, saving of provisions of Indian Succession Act relating to, sec. 100.
Witness bound to answer criminating questions, sec. 132.
" to characters may be cross-examined and re-examined, sec. 140.
Writing, evidence as to matters in, sec. 144.
Written contract, evidence of terms of, sec. 91.
" " exclusion of oral evidence as to terms of, sec. 92.

APPENDIX A.

Speech delivered by the Hon'ble J. Fitzjames Stephen, Q. C., on presenting to the Viceregal Council of India, the report of the Select Committee on the Bill to define and amend the Law of Evidence on the 31st March 1871.

My Lord,—I feel that I owe an apology to your Lordship and the Council, for requesting their attention to a second Speech upon a purely legal subject, after the one which I delivered a week ago, upon the Limitation Act. On this occasion, however, I have to explain the position of a measure, perhaps as important as any that has been passed of late years by the Indian Legislature, inasmuch as, if it becomes law, it will affect the daily administration of both civil and criminal procedure throughout the whole country. Moreover, the subject-matter to which the Bill refers, is one of deep and wide general interest, for a Law of Evidence properly constructed would be nothing less than an application of the practical experience aqcuired in Courts of Law, to the problem of inquiring into the truth as to controverted questions of fact.

This is the object which has been kept in view in framing the Bill which the Committee append to their report, and which I am now to describe in a general way to your Lordship and the Council.

I will state in the first place the history of the measure down to the present time. So far back as the year 1868, the Indian Law Commissioners drew a Draft Evidence Act, which was sent over to this country, and introduced and referred to a Select Committee, by my friend and predecessor Mr. Maine. The Bill was circulated for opinion to the Local Governments, and was pronounced by every legal authority to which it was submitted, to be unsuitable to the wants of this country. In this view the Committee concur, for reasons which I need not state in detail on the present occasion. I may observe in general, however, that the principal reasons were, that the Bill was not sufficiently elementry; that it was in several respects incomplete, and that, if it became law, it would not supersede the necessity under which judicial officers in this country are at present placed, of acquainting themselves by means of English hand-books with the English law upon this subject. The Commissioners' draft, indeed, would hardly be intelligible to a person who did not enter upon the study of it, with a considerable knowledge of the English law. Under these circumstances, a new Draft was framed, which we now propose to print and circulate, and on which I hope to receive the opinions of the Local Governments and High Courts, in the course of the summer, say, by next September, so that their criticisms may be deliberately weighed, and the measure may be finally disposed of, by this time next year.

The report of the Committee explains very fully the scheme of the Bill, which, of course, is of considerable, though not, I hope, of unwieldy, length, and enters fully into the reasons which have led us

to adopt its leading provisions. I will not weary the Council by going into all these questions on the present occasion. I will confine myself to saying that I trust that those who will have to criticise the Bill will begin by studying the report, which has been drawn up with great care, and which, as well as the Bill itself, forms a connected and systematic whole. The general object kept in view in framing the Bill has been to produce something from which a student might derive a clear, comprehensive and distinct knowledge of the subject, without unnecessary labour, but not, of course, without that degree of careful and sustained attention which is necessary in order to master any important and intricate matter. It is by this standard that the Committee in general, and I in particular, as the member in charge of the Bill, desire that it may be tried.

With this reference to the Bill and the report of the Committee, I proceed to discuss the general questions connected with the subject, and to mention a few of the leading features of the measure.

I suppose that I may assume, as generally admitted, the necessity which exists for legislation on the subject of evidence in British India. It would be exceedingly difficult to say precisely what, at the present moment, the law upon the subject is. To some extent—it is far from being clear to what extent—and in some parts of the country—though questions might be raised as to the particular parts of the country—the English Law of Evidence appears to be in force in British India. Whatever may be the theory, it both is and will continue to be so in practice; for if the English Law of Evidence has not been introduced into this country, English lawyers and quasi-lawyers have, and the Courts have been directed to decide according to the law of justice, equity, and good conscience. Practically speaking, these attractive words mean little more than an imperfect understanding of imperfect collections, of not very recent editions of English text-books. It is difficult to imagine any thing much less satisfactory than such a state of the law as this. A good deal may be said for an elaborate legal system, well understood and strictly administered. A good deal may be said for unaided mother-wit and natural shrewdness; but a half-and-half system, in which a vast body of half-understood law, destitute of arrangement and of uncertain authority, maintains a dead-alive existence, is a state of things which it is by no means easy to praise.

Legislation being thus necessary, in what direction is legislation to proceed? A gentleman, for whose opinion upon all subjects connected with Indian Law and legislation, I, in common with most other people have a profound respect, said to me the other day in discussing the subject:—'My Evidence Bill would be a very short one. It would consist of one rule, to this effect—All rules of evidence are hereby abolished.' I believe that the opinion thus vigorously expressed, is really held by a large number of persons who would not avow it so plainly. There is, in short, in the lay world, including in the expression the majority of Indian civilians, an impression that rules of evidence are technicalities invented by lawyers principally, for what Bentham called, fee-gathering purposes, and of no real value in the investigation of truth. I cannot admit that this impression is in any degree correct. I believe that rules of evidence are of very great value in all inquiries into matters of fact, and in particular, in inquiries for judicial purposes; and that it is practically impossible to investigate difficult subjects without regard to them.

It is worth while to illustrate this point a little, because the necessity for rules of evidence rests upon it; but strong proof of it is to be found in the fact, that in all ages and countries there have been rules of evidence. In rude times and amongst primitive people the task of arriving at the truth as to matters of fact, was regarded as so hopelessly difficult, that rude arbitrary substitutes for any sort of rational procedure were provided, in the shape of ordeals and judicial combats. When people began to obtain glimpses of the true methods of investigation, they seem to have considered as almost supernatural skill, what in our days would fall within the scope of average police officers or attorneys' clerks. The delighted wonder which was displayed by the Jews, according to the apocryphal story of Susannah and the Elders, at what a friend of mine used to call 'that very feeble cross-examination of Daniel's about the trees,' is a good instance of this. At a later period, arbitrary rules of evidence began to be formed. Such a fact must be proved by two eye-witnesses; such another by four; such another by seven. To say nothing of European systems, in which such rules were in force, the Hedáya is full of them. These rules were never introduced in their full force into England, but the system which was adopted, or rather which grew up by degrees, was of a very mixed and exceedingly singular character. Part of it consisted of rules declaring large classes of witnesses to be incompetent. Part was intimately connected with the English system of special pleading, which was so contrived, as to define with extreme precision, the facts upon which the parties differed, or were, as the phrase goes, at issue. Part was the result of the practical experience of the Courts, and these rules were by far the most valuable portion, in my opinion, of the English Law of Evidence. Most of the other rules have, indeed, been cut away by legislation, and those which still remain, may fairly be taken to be the nett result of English judicial experience in modern times. In the most general terms, these rules are—

1, that evidence must be confined to the issue;
2, that hearsay is no evidence;
3, that the best evidence must be given;
4, rules as to confession and admissions;
5, rules as to documentary evidence.

I have two general remarks to make upon them.

The first is, that they are sound in substance and eminently useful in practice, and that, when properly understood, they are calculated to afford invaluable assistance to all who have to take part in the administration of justice.

The second is, that I believe that no body of rules upon any important subject, were ever expressed so loosely, in such an intricate manner, or at such intolerable length.

It is necessary to prove the first of these propositions, in order to justify the recommendation of the Committee that the substance of the rules in question, should be introduced in the form of express law into this country. It is necessary to prove the second proposition, in order to justify the attempt made in the Bill to reduce the rules to order and system.

First, then, as to the proposition that the rules in question are substantially sound, and do far more good than harm, even in their present confused condition. The proof of this is, I think, to be found

in a comparison between the proceedings of English Courts of Justice, and those of countries which have no such rules, and between the proceedings of English Courts in which these rules are, and those in which they are not, understood and acted upon. As a preliminary remark, I think, I ought to observe that the knowledge of these rules possessed by English lawyers, is derived far more from daily practice in the Courts, than from theoretical study. Many English lawyers know by habit, almost instinctively, whether this or that (to use the common phrase) is or is not evidence, although they have hardly given the theory of the matter a thought. The value of these rules should accordingly be tested by their practical results, and not by the theories on which they have been justified. Those theories are clumsy, intricate, ambiguous, and in many instances absurd and are mere afterthoughts suggested by the eminently sagacious practice which they were intended to justify and explain. What then is the practical effect of these rules? I may perhaps be permitted to answer this by referring to a book which I published in 1863 on the Criminal Law of England, which contains, amongst other things, an analysis of several celebrated trials, English and French. One object of that analysis was to contrast the effect of the presence and absence of rules of evidence; and I think that any one who would take the trouble to compare those trials together carefully, would agree with me in the conclusion, that the practical effect of the English rules of evidence in those cases, was to shorten the proceedings enormously, and at the same time to consolidate and strengthen them, keeping out nothing that a reasonable person would have wished to have before him as materials for his judgment. The French system, on the other hand, which dispenses with all rules of evidence, got, at least in those cases, no other result from the want of them than floods of irrelevant gossip and collateral questions, enough to confuse and bewilder the strongest head.

Again, compare the proceeding of an ordinary Court of criminal justice with the proceedings of a Court-martial, in which the rules of evidence are far less strictly enforced, and less clearly understood. An ordinary Criminal Court never gets very far from the point, but a Court-martial continually wanders into questions far remote from those which it was assembled to try. Nothing, for instance, is more common than to see the prosecutor change places, as it were, with the prisoner, or to find collateral issues pursued till the Court finds itself engaged in determining, not whether A was guilty of a military offence, but whether Z told a falsehood on some irrelevant subject. In a case which I well recollect, B testified against A. B being cross-examined to his credit, stated a fact not otherwise relevant to the inquiry. Z denied the fact which B affirmed, and made further statements which were contradicted by intermediate letters of the alphabet. No Judge can possibly be expected, by the mere light of nature, to know how to set limits to the inquiries in which he is engaged; yet if he does not, an incalculable waste of time and energy, and a great weakening of the authority of his Court, is sure to follow. Active and zealous advocates, who have no rules of evidence to restrain their zeal, would have it in their power to pervert the administration of justice to the basest purposes, and to inflict immense injury on every class connected with it, directly or remotely. Trials might, and often would, in such hands be made the excuse for tearing open old quarrels, reviving questions laid at rest,

and giving fresh animus to scandals long since exploded; and the main question would frequently be lost sight of, in a cloud of irritating and useless collateral issues. I may be excused for referring to my own experience at the English Bar in illustration of this. Appeals against orders of affiliation, used invariably to produce an amount of perjury and counter-perjury which I should think it would be difficult to exceed in any country. In certain parts of the country, it was a point of honour for the friends of the putative father and of the mother, respectively, to 'go to sessions to swear for him, or her,' as they used to say. No one who did not take part in such cases could imagine the strange ramifications of falsehood and contradiction, into which a hotly-contested case of this kind would spread, or the number of imputations thrown on the honesty and chastity of the different witnesses, male and female. If it had not been for the rules of evidence, the reputations of half the population of the village would have been torn in pieces. The rules of evidence kept matters to a point, and so minimized the evil; but the parties, the witnesses, and the attornies, all appeared to me to be, one more anxious than another, to fight the matter out till the very last rag of character had been stripped off the back of every man, woman, and child, whose name was in any way brought into the discussion. The French Courts display this evil, in an aggravated form. In the work to which I have already referred, will be found an account of the trial of a monk named Leotade for murder. If disposed of under the English rules of evidence, it could hardly have taken more than a day or two at the most. In the French Court, it lasted for, I think, about three weeks, and branched out into all sorts of subjects. One witness, in particular, was discovered to have seduced a girl seven years before, and letters from her to him were read, to throw light on his character. He naturally wished to give his own account of the transaction, but was stopped on the ground that a line must be drawn somewhere, and that the Court chose to draw it between the point at which an irrelevant slur had been thrown on his character, and the point at which, had he been permitted to do so, he might have given an equally irrelevant explanation.

It is not, however, merely for the purpose of confining judicial proceedings within reasonable limits, that rules of evidence are useful. They are also of pre-eminent importance for the purpose of protecting and guiding the Judge in the discharge of his duty. There is a sense in which it may be said with perfect truth, that even legislative power is unequal to the task of abolishing rules of evidence. No doubt, it is competent to the legislature to provide that no rules of evidence shall have the force of law; but unless they expressly forbid all Courts and Judges to act upon any rules at all, or to listen to any arguments as to the manner in which they shall exercise the discretion with which they are invested (propositions too absurd to discuss), the Judges infallibly will hear and will be guided by arguments upon the subject, and these arguments will be drawn from the practice of English Courts. Moreover, the Courts of Appeal will exercise their own discretion in the matter, and thus, by degrees, the system would grow up again in the most cumbrous, chaotic, and inconvenient of all conceivable shapes. The plain truth is that there is only one possible way of getting rid of the law of evidence, and that is by getting rid of the administration of justice by law, and returning to the system of mere personal discretion.

It may be that some persons would like this policy, but I suppose it is one which I need not discuss.

So far, I have considered the rules of evidence merely as they conduce to the important practical objects of keeping proceedings to the point, and of protecting and supporting the Judges. I must now say a few words on their value, as furnishing the Judge with solid tests of truth. I admit that their value in this respect is often exaggerated and misconceived; but I think that, when the matter is fairly stated, it will be found that they have a real, though it may be described as a negative, value for this purpose. There are two great problems on which the rules of evidence throw no light at all, and on which they are not intended to throw any light; and it must be admitted that those problems are by far the most important of any, which a Judge has to solve. No rule of evidence that ever was framed, will assist a Judge in the very smallest degree in determining the master-question of the whole subject—whether, and how far, he ought to believe what the witnesses say? Again, rules of evidence are not, and do not profess to be, rules of logic. They throw no light at all, on a further question of equal importance to the one just stated. What inference ought the Judge to draw from the facts in which, after considering the statements made to him, he believes? In every judicial proceeding whatever, these two questions—Is this true? and, if it is true, what then?—ought to be constantly present to the mind of the Judge; and it must be admitted, both that the rules of evidence do not throw the smallest portion of light upon them, and that persons who are absolutely ignorant of those rules, may give a much better answer to each of these questions, then men to whom every rule of evidence is perfectly familiar. I think, that a more or less distinct perception of this, coupled with impatience of the exaggerated pretensions which have sometimes been made on behalf of the rules of evidence, are the principal reasons for the distrust and dislike, with which they are at times regarded. This dislike, I think, is merely a particular instance of the vulgar error, which in so many cases leads people to depreciate art in comparison with nature; as if there were an opposition between the two, and as if art in all cases did not presuppose and depend upon nature. The best shoes in the world will not make a man walk, nor will the best glasses make him see; and in just the same way, the best rules of evidence will not supply the place of natural sagacity, or of a taste for, and training in logic; but it no more follows that rules of evidence are useless as guides to truth, than that shoes or glasses are useless as assistances to the feet and to the eyes. The real use of rules of evidence in ascertaining the truth, consists in the fact that they supply tests, warranted by very long and varied experience, as to two great points, the relevancy of facts to the question to be decided by the Court, and the sort of evidence by which particular facts ought to be proved. They may in the broadest and most popular form be stated thus:—

If you want to arrive at the truth as to any matter of fact of serious importance, observe the following maxims:—

First, if your belief in the principal fact which you wish to ascertain is to rest, after all, upon an inference from other facts, let those facts, all events, be closely connected with the principal fact in some one of certain specific modes. Secondly, never believe in any fact whatever, whether it is the fact which you principally wish to deter-

mine, or whether it is a fact from which you propose to infer the existence of the principal fact, until you have before you the best evidence that is to be had; that to say, if the fact is a thing done, have before you some one who saw it done with his own eyes: if it was a thing said, have before you some one who heard it said with his own ears: if it was a written paper, have the paper before you and read it for yourself.

This—exceptions, qualifications and explanations apart—is the true essence of the rules of evidence, and I think that no one will deny, either that these rules are in themselves eminently wise, or that they are by no means so obvious and self-evident that the mere unassisted natural sagacity of judicial officers of every grade can be trusted to grasp their full meaning, and to apply them to the practical questions which arise in the administration of justice, with no assistance from express law. I do not wish to exaggerate, but I must add, that I attach some moral value to these rules. If they are firmly grasped by Courts of Justice, and rigidly insisted upon in all practical matters which come before the Courts, they will gradually work their way amongst the people at large, and furnish them with tests by which to distinguish between credulity and rational belief, upon a great variety of matters, and this may be of vast importance. I ought to add that the good which they are calculated to effect, can be obtained only by erecting them into laws and rigorously enforcing them. When this is done, I feel confident that experience will be continually adding to the proof of their value.

So far I have tried to prove the proposition that the English rules of evidence are of real solid value, and that they are not a mere collection of arbitrary subtleties which shackle, instead of guiding, natural sagacity. I pass now to the next proposition, which is, that these rules are expressed in a form so confused, intricate, and lengthy, that it is hardly possible for any one to learn their true meaning otherwise than by practice,—an inconvenience which may be altogether avioded by a careful and systematic distribution. For the proof of this proposition, if indeed it is disputed, I can only refer in general to the English text-books on the subject. They form a mass of confusion which no one can understand until, by the aid of long practice, he learns the intention of the different rules, of which they heap together innumerable and often incoherent illustrations. I am far from wishing to impute this as a fault to the industrious, and in many cases distinguished, authors of these compilations. They, like all other handbooks, are intended for immediate practical purposes, and are mere collections of enormous masses of isolated rulings, generally relating to some very minute point. It was necessary, therefore, that they should be arranged, rather with reference to vague catch-words with which the ears of lawyers are familiar, than with reference to theoretical principles, which it has never been worth any lawyer's while to investigate.

The condition of the law of evidence, as well as the condition of many other branches of the law of England, affords continual illustrations of the extraordinary intricacy and difficulty which arises from the combination of the very greatest practical sagacity with an absence of sound theory, or what is still worse, with the presence of unsound theory. No one who has not seen it, could possibly imagine how obscure the meaning of a clever man may become when he is

forced to squeeze it into the terms of a theory, which does not fit it and is not true. I will give one or two illustrations of my meaning. The expression 'hearsay is no evidence' early obtained considerable currency in the English Courts. It is referred to in the instructions given to Algernon Sidney for the management of his defence by an eminent barrister, about 200 years ago. In a general way, its meaning is clear enough, and, what is more, is true; but, when considered as the full expression of a general truth, from which rules can be deduced in particular cases, it is inaccurate, faulty, and obscure to the last degree. The objections to it are, that both 'hearsay' and 'evidence' are words of the most uncertain kind, each of which may mean several different things. For instance, hearsay may mean what you have heard a man say, and this is its most obvious meaning: but it is difficult to imagine a grosser absurdity than the assertion that no one is ever to prove, in a judicial proceeding, any thing said by any other person. 'Hearsay' again, may be taken to mean that which a person believes, not because he perceived it with his own organs of perception, but on the authority of another; but this is not the natural sense of the word, and it is almost impossible in practice to divest a word of its natural meaning.

The word 'evidence' is also exceedingly ambiguous. It may mean, that which a witness says in Court. It may mean, the facts to which he testifies; regarded as a ground-work for further inference. Notwithstanding this double ambiguity the phrase 'hearsay is no evidence,' being emphatic and easy to recollect, stuck in the ears and in the minds of lawyers, and has been taken by many text-writers as the principle on which their statement of the most important branch of the law of evidence is to be arranged. They accordingly took to describing as hearsay, every fact of which evidence was by law excluded; in short, they turned 'hearsay is no evidence' into 'that which is not evidence is hearsay.' They did not, however, do this expressly. They did it by describing as exceptions to the rule excluding hearsay, all cases in which evidence was admitted of anything, which would have been excluded, but for such exceptions. This is so intricate a statement that I can hardly expect the Council to follow me, but I will give an illustration of what I mean. The question is, whether a piece of land belongs to A or B. A says that it belongs to him, because his father C bought it from D, who bought it from E, and he produces the deeds by which E conveyed the land to D, and D conveyed it to C. Now, as D and E are not parties to the suit between A and B, and as A cannot of his own knowledge know anything of the transaction between them, English text-writers call the deed between D and E 'hearsay;' and according to Mr. Pitt Taylor, the rule which permits such deeds to be given in evidence is the third exception to the rule which excludes hearsay. One of the Judges, if I am not mistaken, called such evidence 'written hearsay,' and so indifferent are English lawyers in general, to the abuse of language for the sake of momentary convenience, that it probably never struck him, that this was a contradiction in terms. I think, however, that it is hard to expect people to understand, bear in mind, and follow out in all its ramifications a system, which employs language in such a peculiar manner, as to call ancient deeds 'written hearsay.' To talk of hearing a document, is like talking of seeing a sound.

I now turn to the ambiguity of the word 'evidence,' to which I have already referred. As I have just said, 'evidence' sometimes means a fact which suggests an inference. For instance, it is common to say,—'Recent possession of stolen goods is evidence of theft;' that is, the fact of such possession suggests the inference of theft. At other times, and I think more frequently, 'evidence' means what a witness actually says in Court, or that which he produces. For instance, we say 'the evidence which he gave was true.' I might occupy, I will not say the attention, but the time of your Lordship and the Council for hours, if I were to attempt to describe the amount of confusion and obscurity which the neglect of this simple and obvious distinction has thrown over the whole subject. I will content myself with observing, that it produces the effect of giving a double meaning to every expression into which the word 'evidence' is introduced. 'Circumstantial evidence,' 'hearsay evidence,' 'direct evidence,' 'primary evidence,' 'best evidence,' have each two sets of meanings, and the result is, that it is almost impossible to arrive at a clear and comprehensive knowledge of the whole subject, or to see how its various parts are related to each other, without an amount of study, thought, and practical acquaintance with the actual working of the rules of evidence, which few people are in a position to bestow upon the subject.

I may appear to be detaining the Council unduly upon merely verbal questions, but it is a common fault to under-rate the importance of accurate language, particularly in regard to the fundamental terms of any particular branch of knowledge. In regard to law, I have not the least doubt that a very large proportion of the intricacy and difficulty which attach to it, is due to the fact, that proper pains have never been bestowed on the definition of its fundamental terms. What could be made of Euclid, if we were not quite sure of our meaning when we spoke of a point, a line, a circle, parallels, and perpendiculars? such a defect would render geometry impossible, and the defect which makes large parts of the law almost unintelligible, and beyond all measure cumbrous and unwieldy, is precisely analogous to it in principle. I believe that, if its fundamental terms were defined as clearly as the term 'law' was defined by the late Mr. Austin, the study of law would become comparatively easy, and in many cases attractive for its own sake; that its bulk might be diminished to a degree of which people in general have hardly any conception; that the expense of its administration might be greatly diminished, and that comparative certainty might do away with a very large amount of needless and harassing litigation.

I shall now proceed to describe, shortly, the principles on which the Draft Bill of the Committee has been framed. In the first place, we thought it necessary to fix the sense in which the fundamental terms of the subject should be understood, and for that purpose we define 'fact,' 'evidence,' 'proof,' 'proved,' and some other words as to which I will content myself with a reference to the report. It seemed to us that the remainder of the subject would fall under the following general heads:—

1.—The relevancy of facts to the issues to be proved.

2.—The proof of facts, acording to their nature by oral, documentary, or material evidence.

3.—The production of evidence in Court.

4.—The duties of the Court, and the effect of the mistaken admission or rejection of evidence.

These heads would, we think, be found to embrace, and to arrange in their natural order, all the subjects treated of by English text-writers and Judges, under the general head of the Law of Evidence. I will say a few words on their relation to each other, and on each of them in turn.

The main feature of the Bill, consists in the distinction drawn by it between the relevancy of facts, and the mode of proving relevant facts. The neglect of this distinction by English text-writers, no doubt, arises from the ambiguity of the word 'evidence,' to which I have already referred, and is the main cause of the extreme difficulty of understanding the English Law of Evidence systematically. I will shortly illustrate my meaning. A says, 'Z committed murder.' First of all, this is a fact—something which could be directly perceived by the sense of hearing and distinctly remembered afterwards. Now, whether this fact is or is not relevant in a particular case, depends upon a variety of circumstances. If the question is, whether A was guilty of defaming Z by accusing him of murder? or whether Z had a motive for assaulting A, because A said that he had committed murder? or if Z is accused of murder, and the object is to show that, when A charged him with it, he behaved as if he were guilty, and in many other instances which might be put, the fact that A spoke those words is clearly relevant. But if the question is, whether Z actually did commit murder, the fact that A thought so or said so, generally speaking, is not relevant. Supposing, however, that the fact is relevant, it is obvious that the words themselves ought to be satisfactorily proved, and the rule of English law—and we think it is a wise rule—is that they must be proved by the assertion of some witness, that he heard them said with his own ears. Here then, we have two questions:—(1,) need the Court decide whether these words were spoken? (2,) if it need, how is it to be satisfied on the fact? English text-writers throw together these two classes of rules under the head of hearsay. They lay down the general rule that hearsay is no evidence, meaning by it that certain classes of facts called hearsay are to be treated as irrelevant to the determination of particular questions, and it is necessary to look through a long list of exceptions to the rule, in order to see whether, in a particular case, A's statement may or may not be proved. If you find that it can be proved, the question is, how can it be proved? and you propose to prove it by a witness who says that B told him that he heard A say so. Again, you are told, 'hearsay is no evidence;' but this time the expression means, not that the fact is irrelevant, but that the testimony by which it is proposed to prove the fact is improper. One extreme inconvenience of this is, that the most important part of the English Law of Evidence is thrown into the most intricate and inconvenient of all possible forms, that of a wide negative, of uncertain meaning, qualified by a long string of intricate exceptions.

No one who has not gone through the process of learning the law by mere rule-of-thumb practice, can imagine the degree of needless obscurity and difficulty upon this point, of the existence of which he becomes gradually conscious. It would be perfectly fair to say to almost any English text-writer, 'you tell me, at enormous length, what is not evidence, but you nowhere tell me what is evidence.'

I hope that we have been able to avoid this, and that the second chapter of the Bill will be found to state specifically, and in a positive

form, what sorts of facts are relevant, as being sufficiently connected with the facts in issue to afford grounds for an inference as to their existence or non-existence. I will not weary the Council by specifying those rules, and I will content myself by referring to the Bill and to the report. But I may shortly illustrate them by reference to a passage fron a modern historian, which will relieve the dulness of a very technical speech. The passage to which I refer is a short summary, by Mr. Froude, of the grounds on which he believes that Mary Queen of Scots murdered her husband.

As Mr. Froude is not a lawyer, he certainly wrote, what I am about to read, without reference to rules of evidence. I think the fact that he did, in fact, unconsciously observe them, illustrates very strongly the truth of my assertion, that they are nothing more than the result of experience and practical sagacity, thrown into a categorical shape. I need hardly say that I use the passage merely as an illustration, and without any notion of adopting Mr. Froude's opinions, or asserting the truth of his facts. I am concerned merely with their relevance.

'She (Mary) was known to have been weary of her husband, and anxious to get rid of him.'

(By our draft, Sec. 11. Facts which show motive for any facts in issue, are relevant).

'The difficulty and the means of disposing of him had been discussed in her presence, and she had herself suggested to Sir James Balfour to kill him.

(Sec. 11. Facts which show preparation for a fact in issue, are relevant).

'She brought him to the house where he was destroyed; she was with him two hours before his death;'

(Sec. 9. Facts so connected with the facts in issue as to form part of the same transaction, are relevant)

'and afterwards threw every difficulty in the way of any examination into the circumstances of his end.'

(Sec. 11. Subsequent conduct, influenced by any fact in issue, is relevant).

'The Earl of Bothwell was publicly accused of the murder.'

(Sec. 11. Facts which explain or introduce relevant facts, are relevant).

'She kept him close at her side; she would not allow him to be arrested; she went openly to Seton with him, before her widowhood was a fortnight old. When at last, unwillingly, she consented to his trial, Edinburgh was occupied by his retainers. He presented himself at the Tolbooth surrounded by the Royal Guard, and the charge fell to the ground, because the Crown did not prosecute, and the Earl of Lennox had been prevented from appearing.'

'A few weeks later she married Bothwell, though he had a wife already, and when her subjects rose in arms against her, and took her prisoner, she refused to allow herself to be divorced from him.'

(Sec. 11. Subsequent conduct, influenced by any fact in issue, and facts showing motive are relevant).

A large part of the evidence consisted of certain letters which the Queen was said to have written. Mr. Froude, in passages which I need not read, alleges facts which go to show that she tried to prevent the production, and to secure the destruction of these letters.

(Sec. 11.—Illustration *h*. The facts that either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give the facts in issue, an appearance favorable to himself, or that he destroyed or concealed evidence, &c., are relevant).

Finally, Mr. Froude observes :—' In her own correspondence, though she denies the crime, there is nowhere the clear ring of innocence which makes its weight felt, even when the evidence is weak, which supports the words.'

(Sec. 25. An admission is a statement, oral or documentray, which suggests any inference as to any relevant fact, and which is made by parties to the proceeding. Sec. 26. Admissions are relevant facts only as against the person who denies the inference which they suggest. They are not relevant on behalf of the person who asserts the truth of such inference. The letters would be evidence under these sections, and Mr. Froude's remark is in nature of a criticism on them by a prosecuting Council).

In English text-books, so far as my experience goes, these rules and others of the same sort, are nowhere presented in a compact substantive form. They come in for the most part, as exceptions to the rule that evidence must be confined to the points in issue. In fact, they can be learned only by the practice of the Courts, though they are as rational and easy as any rules need be, if they are properly stated.

From the rules which state what facts may be proved, we pass to those which prescribe the manner in which a relevant fact must be proved. Passing over technical matters—such as the law relating to judicial notice, questions relating to public documents and the like—these rules may be said to be three in number, though, of course, numerous supplementary rules are required to adapt them to practice. They are these—

1. If a fact is proved by oral evidence, the oral evidence must be direct ; that is to say, things seen must be deposed to by some one who says he saw them with his own eyes. Things heard by some one who says he heard them with his own ears.

2. Original documents must be produced or accounted for, before any other evidence can be given of their contents.

3. When a contract has been reduced to writing, it must not be varied by oral evidence.

These rules, as I have said, are subject to certain exceptions, and require certain practical adjustments ; but I do not think that any one who has had practical experience of the working of courts of justice will deny their substantial soundness, or indeed the absolute practical necessity for enforcing them.

Passing over these matters which are explained at length in the Bill and report, I come to two points to which the Committee attach the greatest importance as having peculiar reference to the administration of justice in India. The first of these rules refers to the part taken by the Judge in the examination of witnesses ; the second, to the effect of the improper admission or rejection of evidence upon the proceeding in case of appeal.

That part of the English law of evidence which relates to the manner in which witnesses are to be examined, assumes the existence of a well-educated Bar, co-operating with the Judge and relieving him practically of every other duty than that of deciding questions which may arise between them. I need hardly say that this state of things

does not exist in India, and that it would be a great mistake to legislate as if it did. In a great number of cases—probably the vast numerical majority—the Judge has to conduct the whole trial himself. In all cases he has to represent the interests of the public much more distinctly than in England. In many cases he has to get at the truth, or as near to it as he can, by the aid of collateral inquiries, which may incidentally lead to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to arm Judges with a general power to ask any questions, upon any facts, of any witnesses, at any stage of the proceedings, irrespectively of the rules of evidence binding on the parties and their agents, and we have inserted in the Bill a distinct declaration, that it is the duty of the Judge, in criminal cases, not merely to listen to the evidence put before him, but to inquire to the utmost into the truth of the matter. We do not think that the English theories, that the public have no interest in arriving at the truth, and that even criminal proceedings ought to be regarded mainly in the light of private questions between the prosecutor and the prisoner, are at all suited to India, if indeed they are the result of anything better than carelessness and apathy in England.

With respect to the question of appeals, we have drawn a series of provisions, the object of which is to prevent mere mistakes in procedure from destroying the value of work properly done, as far as it goes. We have gone through the various cases in which, as appears to us the question of the improper admission or rejection or omission of evidence can arise; and have provided that, whenever any Appellate Court discovers the occurrence of any mistake, it shall not reverse the decision of the inferior Court, but shall either strike out what is redundant or supply what is defective, as the case may be, and give judgment accordingly.

I have addressed your Lordship and the Council at great length but not, I think, at greater length than the importance of the matter requires. I have only to add, that I propose to proceed with the Bill when the Government returns to Calcutta, and that I hope before that time, to receive the criticisms of the Local Governments upon the measure.

APPENDIX B.

FIRST REPORT OF SELECT COMMITTEE.

We, the members of the Select Committee to which the Evidence Bill has been referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From Officiating Under Secretary, Home Department, No. 423, dated 23rd October 1868, and enclosures.
From Assistant Secretary, Foreign Department, No. 333, dated 12th December 1868, and enclosure.
Remarks by the Hon'ble the Chief Justice, Bombay (no date)
Remarks by Hon'ble Justice Phear, dated 8th December 1868.
From Secretary to Chief Commissioner, British Burmah, No. 595—1, dated 1st December 1868.
From Assistant Secretary to Government of Bengal, Legislative Department, No. 37, dated 9th January 1869, and enclosure.
From Deputy Judge Advocate General of the Army, dated 26th January 1869, and enclosures.
From Officiating Under Secretary, Home Department, No. 258, dated 17th February 1869, forwarding memorial from Mukhtárs and Revenue Agents, Howrah, dated 4th February 1869.
From Secretary to Indian Law Commissioners, dated 6th February 1869
From Chief Secretary to Government, Fort St. George, No. 120, dated 18th March 1869, and enclosures.
From Secretary to Government of Bombay, No. 2971, dated 7th September 1869, and enclosures.
From Secretary to Government of Bombay, No 3188, dated 24th September 1869, and enclosure.
Fifth Report of Her Majesty's Indian Law Commissioners on the Bill
From Officiating Inspector General of Police, Panjáb, No. 2657, dated 28th September 1870.
From Secretary to Government of India, Home Department, No. 1892 dated 18th October 1870, forwarding letter from Chief Commissioner, British Burmah, No. 61, dated 15th August 1870, and enclosures.

After a very careful consideration of the draft prepared by the Indian Law Commissioners, we have arrived at the conclusion that it is not suited to the wants of this country.

We have recorded in a separate report the grounds on which this conclusion is based. They are in a few words that the Commissioners' draft is not sufficiently elementary for the officers for whose use it is designed, and that it assumes an acquaintance on their part with the law of England which can scarcely be expected from them. Our draft, however, though arranged on a different principle from theirs, embodies most of its provisions. In general, it has been our object to reproduce the English Law of Evidence with certain modifications, most of which have been suggested by the Commissioners, though with some this is not the case. The English Law of Evidence appears to us to be totally destitute of arrangement. This arises partly from the circumstance that its leading terms are continually used in different senses, and partly from the circumstance that the Law of Evidence was formed by degrees out of various elements, and in particular out of the English system of pleading and the habitual practice of the Courts of Common Law. For instance, the rule that evidence must be confined to points in issue is founded on the system of pleading. The rule that hearsay is no evidence is part of the practice of the Courts ; but the two sets of rules run into each other in such an irregular way as to produce

between them a result which no one can possibly understand systematically, unless he is both acquainted with the principles of a system of pleading which is being rapidly abolished, and with the every-day practice of the Common Law Courts, which can be acquired and understood only by those who habitually take part in it. This knowledge, moreover, must be qualified by a study of text-books which are seldom systematically arranged.

Many other circumstances, to which we need not refer, have contributed largely to the general result; but we may illustrate the extreme intricacy of the law, and the total absence of anything like system which pervades every part of it, by a single instance. In Mr. Pitt Taylor's work on Evidence it is stated that "ancient documents, when tendered in support of ancient possession." form the third exception to the rule which excludes hearsay. The question is whether A is entitled to a fishery. He produces a royal grant of the fishery to his ancestor. This fact the law describes as a peculiar kind of hearsay admissible by special exception. Surely this is using language in a most uninstructive manner.

This being the case, we have discarded altogether the phraseology in which the English text-writers usually express themselves, and have attempted first to ascertain, and then to arrange in their natural order, the principles which underlie the numerous cases and fragmentary rules which they have collected together. The result is as follows :—

Every judicial proceeding whatever has for its purpose the ascertaining of some right or liability. If the proceeding is criminal, the object is to ascertain the liability to punishment of the person accused; if the proceeding is civil, the object is to ascertain some right of property or of status, or the right of one party, and the liability of the other, to some form of relief

All rights and liabilities are dependent upon and arise out of facts, and facts fall into two classes, those which can, and those which cannot, be perceived by the senses. Of facts which can be perceived by the senses, it is superfluous to give examples. Of facts which cannot be perceived by the senses, intention, fraud, good faith, and knowledge may be given as examples. But each class of facts has, in common, one element which entitles them to the name of facts—they can be directly perceived either with or without the intervention of the senses. A man can testify to the fact that, at a certain time, he had a certain intention, on the same ground as that on which he can testify that, at a certain time and place, he saw a particular man. He has, in each case, a present recollection of a past direct perception. Moreover, it is equally necessary to ascertain facts of each class in judicial proceedings, and they must in most cases be ascertained in precisely the same way.

Facts may be related to rights and liabilities in one of two different ways :

1.—They may by themselves, or in connection with other facts, constitute such a state of things that the existence of the disputed right or liability would be a legal inference from them. From the fact that A is the eldest son of B, there arises of necessity the

inference that A is by the law of England the heir-at-law of B, and that he has such rights as that status involves. From the fact that A caused the death of B under certain circumstances, and with a certain intention or knowledge, there arises of necessity the inference that A murdered B, and is liable to the punishment provided by law for murder.

Facts thus related to a proceeding may be called facts in issue, unless, indeed, their existence is undisputed.

2.—Facts, which are not themselves in issue in the sense above explained, may affect the probability of the existence of facts in issue, and these may be called collateral facts.

It appears to us that these two classes comprise all the facts with which it can in any event be necessary for courts of justice to concern themselves, so that this classification exhausts all facts considered in their relation to the proceeding in which they are to be proved.

This introduces the question of proof. It is obvious that, whether an alleged fact is a fact in issue or a collateral fact, the Court can draw no inference from its existence till it believes it to exist; and it is also obvious that the belief of the Court in the existence of a given fact ought to proceed upon grounds altogether independent of the relation of the fact to the object and nature of the proceeding in which its existence is to be determined. The question is whether A wrote a letter. The letter may have contained the terms of a contract. It may have been a libel. It may have constituted the motive for the commission of a crime by B. It may supply proof of an *alibi* in favour of A. It may be an admission or a confession of crime; but whatever may be the relation of the fact to the proceeding, the Court cannot act upon it unless it believes that A did write the letter, and that belief must obviously be produced, in each of the cases mentioned, by the same or similar means. If, for instance, the Court requires the production of the original when the writing of the letter is a crime, there can be no reason why it should be satisfied with a copy when the writing of the letter is a motive for a crime. In short, the way in which a fact should be proved depends on the nature of the fact, and not on the relation of the fact to the proceeding.

The instrument by which the Court is convinced of a fact is evidence. It is often classified as being either direct or circumstantial. We have not adopted this classification.

If the distinction is that direct evidence establishes a fact in issue, whereas circumstantial evidence establishes a collateral fact, evidence is classified, not with reference to its essential qualities, but with reference to the use to which it is put; as if paper were to be defined, not by reference to its component elements, but as being used for writing or for printing. We have shown that the mode in which a fact must be proved depends on its nature, and not on the use to be made of it. Evidence, therefore, should be defined, not with reference to the nature of the fact which it is to prove, but with reference to its own nature.

Sometimes the distinction is stated thus: Direct evidence is a

statement of what a man has actually seen or heard. Circumstantial evidence is something from which facts in issue are to be inferred. If the phrase is thus used, the word *evidence*, in the two phrases (direct *evidence* and circumstantial *evidence)* opposed to each other, has two different meanings. In the first, it means testimony; in the second, it means a fact which is to serve as the foundation for an inference. It would indeed be quite correct, if this view is taken, to say 'Circumstantial evidence must be proved by direct evidence.' This would be a most clumsy mode of expression, but it shows the ambiguity of the word "evidence," which means either—

(1) words spoken or things produced in order to convince the Court of the existence of facts; or

(2) facts of which the Court is so convinced which suggest some inference as to other facts.

We use the word 'evidence' in the first of these senses only, and so used it may be reduced to three heads—1, oral evidence; 2, documentary evidence; 3, material evidence.

Finally, the evidence by which facts are to be proved must be brought to the notice of the Court and submitted to its judgment, and the Court must form its judgment respecting them.

These general considerations appear to us to supply the groundwork for a systematic and complete distribution of the subject as follows:—

I.—Preliminary.

II.—The relevancy of facts to the issue.

III.—The proofs of facts according to their nature, by oral, documentary or material evidence.

IV.—The production of evidence.

V.—Procedure.

We have accordingly distributed the subject under these heads in the manner which we now proceed to describe somewhat more fully.

I.—Preliminary.

Under this head we have defined "fact," "facts in issue," "collateral facts," "a document," "evidence," "proof" and "proved," "necessary inference" and "presume." We have also laid down in general terms the duty of the Court.

Of our definitions of "fact," "facts in issue," "collateral facts," and "evidence," we need say no more than that they are framed in accordance with the principles already stated. We may, however, shortly illustrate the effect of the definition of evidence.

It will make perfectly clear several matters over which the ambiguity of the word, as used in English law, has thrown much confusion. The subject of circumstantial evidence will be distributed into its elements, and will be dealt with thus: The question is whether A committed a crime. The facts are—that he had a motive, displayed by statements of his own, for it; that the scene of the crime shows foot-

marks which correspond with his feet; that he was in possession of property which might have been procured by it, and that he wrote a letter indicating his guilt. On turning to Chapter II, it will be found that all these are relevant facts, either as motive, incidents of facts in issue, effects of facts in issue, or conduct influenced by facts in issue. On turning to Chapter III, it will be seen how each of these facts must be proved, namely, the statements displaying motive, by the direct oral evidence of some one who says he heard them; the footmarks, by the direct oral evidence of some one who says he saw them; the possession of the property, by the production of the property in Court, and by the direct oral evidence of some one who had seen it in the prisoner's possession; and the letter, by the production of the letter itself: or secondary evidence of it, if the case allows of secondary evidence.

So the phrase "hearsay evidence," which, as the Commissioners observe, is used by English writers in so vague and unsatisfactory a manner, finds no place in our draft, and we hope we have avoided the possibility of any confusion in connection with it. Chapter II provides specifically, and in a manner which corresponds, on the whole (though with some modifications), with the English law, in what cases the statements and opinions of third persons as to relevant facts shall, and in what cases they shall not, be themselves relevant, and Chapter V, On Proof by Oral Evidence, provides that oral evidence shall in all cases be direct, on whatever ground the fact which it is to establish may be relevant to the issue: that is to say, if the fact is one which could be seen, it must be established by a witness who says he saw it; if it could be heard, by a witness who says he heard it, whether it is fact in issue, or a collateral fact. These provisions distribute the different things described by the phrase "hearsay evidence" in the same way in which the different things described by the phrase "circumstantial evidence" are distributed by the other provisions.

So, our definition does away with a confusion which arises out of the double meaning of the word 'evidence' in the phrases "primary" and "secondary evidence." "Primary evidence" sometimes means a relevant fact, and at other times the proof of a document by its production as opposed to proof by a copy. In our draft, "primary" and "secondary" are distinctly defined, and confined to an unambiguous meaning. 'Evidence' in each case means words spoken or things (documents or not) shown to the Court.

Finally, we have substituted for the phrase "conclusive evidence" the phrase "necessary inference." The phrase "conclusive evidence" is not open to objection on the ground of obscurity or ambiguity, but the word "evidence" in it means, not what we understand by evidence, but a fact established by evidence from which a particular inference necessarily follows. Our phrase, therefore, harmonises with the rest of our draft, whereas "conclusive evidence" would not.

The definitions of "proof," "proved," and "moral certainty" require some comment. The definition of "proof" is subordinate to that of "proved," which is, that a fact is said to be proved in two

cases, that is to say, when the Court after hearing the evidence respecting it—

(1) believes in its existence; or

(2) thinks its existence so probable that a reasonable man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

This degree of probability we describe as "moral certainty," and we provide that no fact shall be regarded as morally certain unless the evidence is such as to render its non-existence improbable. This is as near an approach as we have been able to make to a distinct equivalent for the phrase "reasonable doubt," which is usually employed by English Judges in leaving questions of fact to a jury. The question "When is doubt reasonable?" is one which cannot be completely answered; for at bottom it is a question, not of science, but of prudence, and our definition of the word "proved" is meant to make this plain. We have, however, attached to it the negative condition that a reasonable man ought not to be morally certain of a conclusion, merely because it is probable, if other conclusions are also probable. It is easier to illustrate this principle than to state, without a prolonged abstract discussion, which would be out of place on the present occasion, the general grounds on which it rests Our illustrations are meant to point out to Judges that they are not to convict A of an offence which must have been committed either by him or by B, unless circumstances exist which make it improbable that the offence was committed by B. We have not attempted to carry the matter further. We believe that in all countries, and in this country more than in any other, it is absolutely necessary to leave to Judges a wide discretion as to the risk of error which they choose to incur in coming to a decision, and that this is a matter of prudence and practice, as to which rules ought to be laid down, rather with the view of guiding, than with the view of fettering, discretion.

The last provision, in the preliminary part, to which we would call attention, defines in very general terms the duty of the Court in deciding questions of fact. Its generality appeared, to us to render the preliminary, rather than the concluding, chapter the proper place for it. This section declares that the duty of the Court is to determine questions of fact by drawing inferences—

(1) from the evidence given to the facts alleged to exist;

(2) from facts proved to facts not proved;

(3) from the absence of evidence which might have been given;

(4) from the admissions and conduct of the parties, and generally from the circumstances of the case.

We have said nothing of the principle on which these inferences are to be drawn, as that is a matter of logic, and does not belong specially to the subject of judicial evidence; but we wish to point out and put distinctly upon record the fact that to infer, and not merely to accept or register evidence, is in all cases the duty of the Court. One of the many fallacies which

owe their origin to the ambiguity of the word "evidence," and the looseness with which it is used, is the common assertion that direct evidence leaves no room for inference, whereas indirect or circumstantial evidence does In fact, all evidence whatever is useful only as the groundwork for inferences, of which the inference that the facts which the witness alleges to exist do or did actually exist, is very often the most difficult to draw. The truth is that to infer in one or other of the different shapes which we have stated is the great duty of the Judge in every case whatever, and we have thought it desirable to point this out in the plainest and broadest way.

We have added two qualifications only to this general rule: (1) that, when the law declares an inference to be necessary, the Court shall draw it, and shall not allow its truth to be contradicted; (2) that, when the law directs the Court to presume a fact, it shall infer its existence till the contrary appears. We have treated in detail of necessary inference and presumptions in other parts of the Bill.

II.—The Relevancy of Facts.

We have already pointed out the place which, in our opinion, belongs to this subject in the law of evidence The question, What facts may you prove? obviously lies at the root of the whole matter, and unless a plain and full answer is given to the question, it is impossible to state the law systematically. The answer to the question is, we think, to be found in several of the wide exceptions which are made by English text-writers to the wide exclusive rules—that evidence must be confined to the points in issue, that hearsay is no evidence, and that the best evidence must be given, though other parts of the same exceptions are to be found in different branches of the law. We think, however, that by a comparison and collection of these exceptions we have succeeded in forming a collection of positive rules as to the relevancy of facts to the issue, which will admit every fact which a rational man could wish to have before him in investigating any question of fact.

These rules declare to be relevant—

(1) all facts in issue;

(2) all collateral facts, which

(a) form part of the same transaction;

(b) are the immediate occasion, cause, or effect of facts in issue;

(c) show motive, preparation, or conduct affected by a fact in issue;

(d) are necessary to be known in order to introduce or explain relevant facts;

(e) are done or said by a conspirator in furtherance of a common design;

(f) are either inconsistent with any fact in issue; or inconsistent with it, except upon a supposition which should

be proved by the other side; or render its existence or non-existence morally certain, according to the definition of moral certainty given above;

(g) affect the amount of damages in cases where damages are claimed;

(h) show the origin or existence of a disputed right or custom;

(i) show the existence of a relevant state of mind and body;

(k) show the existence of a series of which a relevant fact forms a part; or

(l) show (in certain cases) the existence of a given course of business.

The remainder of the Chapter throws into a positive shape what in English law forms the exceptions to the rule, excluding the various matters described as hearsay. They relate to—

the conduct of the parties on previous occasions;

the statements of the parties on previous occasions;

previous judgments;

statements of third persons;

opinions of third persons.

1.—In reference to the conduct of the parties on previous occasions, we embody in three sections the existing law of England as to evidence of character, with some modifications We include, under the word 'character,' both reputation and disposition, and we permit evidence to be given of previous convictions against a prisoner for the purpose of prejudicing him We do not see why he should not be prejudiced by such evidence, if it is true.

2.—Under the head of The Statements of the Parties on other Occasions, we deal with the question of admissions, as to which we have not materially altered the existing law.

We have not thought it necessary to transfer from their present position in the Code of Criminal Procedure the rules as to confessions made to the Police. This appears to us to be a special matter relating rather to the discipline of the police than to the principles of evidence.

3 —Previous judgments appear to follow naturally upon previous statements. Under this head we deal with the question of *res judicata*

We have not attempted to deal with the question of the bar of suits by previous judgments between the same parties. This is a question of procedure rather than of evidence, and will be properly dealt with whenever the Codes of Civil and Criminal Procedure are re-enacted. We have, on the other hand, dealt in substantial accordance with the principles of the law of England with the question of the relevancy of judgments between strangers. For the sake of simplicity, and in order to

avoid the difficulty of defining or enumerating judgments *in rem*, we have adopted the statement of the law by Sir Barnes Peacock in *Kunya Lal* v *Radha Churn*, 7, Suth W. R, 339.

4. As to statements by third persons We have made one considerable alteration in the existing law by admitting, generally, statements made by third persons about relevant facts, if attended by conduct which confirms their truth, or if they refer to facts independently proved, provided that the person making them appears to the Court to have special means of knowledge. We have given several illustrations of this, the strongest of which is suggested by Mr. Pitt Taylor. A captain about to sail on a voyage carefully examines the ship, declares his belief that she is sea-worthy, and embarks on her with his family and property uninsured Statements of this sort are surely most unlikely to be false. Evidence of such statements will be admissible under this section, whether the person who makes them is living or dead, producible or not. Some of them would probably be admissible under the English rule which admits statements explanatory of conduct; but as the conduct explained must be relevant, and as no clear definition of relevancy is given by the law of England, it is very difficult to say how far this rule extends.

The next exception refers to statements made by a person who is dead or cannot be found or produced without unreasonable delay or expense. We declare such statements to be relevant if they relate to the cause of the person's death, or are made in the ordinary course of business, or express an opinion as to the existence of a public right, or state the existence of any relationship as to which the party had special means of knowledge, or when they are made in family pedigrees, titles, deeds, &c. We have omitted the restrictions placed by the law of England on the admission of dying declarations and statements about relationship, and as to the necessity that statements should be opposed to the pecuniary interest of the party making them, on the ground that they ought to affect the weight rather than the admissibility of what is, at best, to use Bentham's expression, "makeshift evidence."

We also provide for the admissibility of statements in public or official books, and (in certain cases) of evidence given in previous judicial proceedings.

5. The cases in which the opinions of third persons are relevant are dealt with in sections forty four to fifty.

They declare to be relevant the opinions of experts, opinions as to handwriting, opinions as to usages, and opinions as to relationship and the grounds of such opinions.

This completes that part of the Bill which relates to the relevancy of facts In the particulars stated, and in some others of minor importance, which for the sake of brevity we have not noticed, it modifies the law of England; but we believe that, substantially, it represents that part of the law which is contained in (amongst others) the rules, together with the exceptions to the rules, that evidence must be confined to points in issue, that the best evidence must be given, and

that hearsay is no evidence, though these rules include other matters which we treat of under other heads.

III.—PROOF.

The second chapter having decided what facts are relevant, we proceed to show how a relevant fact is to be proved.

In the first place, the fact to be proved may be one of so much notoriety that the Court will take judicial notice of it, or it may be admitted by the parties. In either of these cases no evidence of its existence need be given. Chapter III, which relates to judicial notice, disposes of this subject. It is taken in part from Act II of 1855, in part from the Commissioners' draft Bill, and in part from the Law of England.

If evidence has to be given of any fact, that evidence must be either oral, documentary, or material, and we proceed in the following chapters to deal with the peculiarities of each of these three kinds of evidence. There is, however, one topic which applies to all of them, of which we treat in Chapter IV. This is the distinction between primary and secondary evidence. As we have already shown, the phrase is ambiguous. We regard it as a legal way of recognizing the obvious principle that the best way of finding out the contents of a document is to read it yourself, and we have accordingly defined primary and secondary evidence thus: in the case of documents or other material things, the document or thing itself is primary evidence. A copy, model, or oral description is secondary evidence. In all other cases oral evidence is primary.

We next proceed (Chapters V, VI, VII, and VIII) to the question of proof by the various kinds of evidence successively, namely, oral, documentary, and material. With regard to oral evidence, we provide that it must in all cases whatever, whether it is primary or secondary, and whether the fact to be proved is a fact in issue or collateral, be direct. That is to say, if the fact to be proved is one that could be seen, it must be proved by some one who says he saw it. If it could be heard, by some one who says he heard it, and so with the other senses. We also provide that, if the fact to be proved is the opinion of a living and producible person, or the grounds on which such opinion is held, it must be proved by the person who holds that opinion on those grounds.

We have, however, provided that if the fact to be proved is the opinion of an expert who cannot be called (which is the case in the majority of cases in this country), and if such opinion has been expressed in any published treatise, it may be proved by the production of the treatise.

This provision, taken in connection with the provisions on relevancy contained in Chapter II, will, we hope, set the whole doctrine of hearsay in a perfectly plain light, for their joint effect is this—

(1) the sayings and doings of third persons are, as a rule, irrelevant, so that no proof of them can be admitted;

(2) in some excepted cases they are relevant;

(3) every act done or word spoken, which is relevant on any ground, must (if proved by oral evidence) be proved by some one who saw it with his own eyes, or heard it with his own ears.

With regard to the chapters which relate to the proof of facts by documentary evidence, and the cases in which secondary evidence may be admitted, we have followed, with few alterations, the existing law. We may observe that Chapter VII contains most of the few presumptions which we have thought it right to introduce into the Bill. They are presumptions which in almost every instance will be true—as to the genuineness of certified copies, gazettes, books purporting to be published at particular places, copies of depositions, &c.

We have inserted a few provisions in Chapter VIII as to material evidence. They reproduce the practice and, as we believe, the law of England upon this subject, though no distinct provisions about it and few judicial decisions upon it are, so far as we are aware, to be found in English law books.

On the subject of the exclusion of oral evidence of a contract, &c., reduced to writing, we have (in Chapter IX) simply followed the law of England and the Commissioners' draft.

IV.—The Production of Proof.

From the question of the proof of facts, we pass to the question of the manner in which the proof is to be produced, and this we treat under the following heads:—

The burden of proof (Chapter X):
Witnesses (Chapter XI):
The administration of oaths (Chapter XII):
Examination of witnesses (Chapter XIII):

With regard to the burden of proof, we lay down the broad rules that the general burden of proof is on the party who, if no evidence at all were given, would fail, and that the burden of proving any particular fact is on the party who affirms it. These are the well-established English rules, and appear to us reasonable in themselves. We have not followed the precedent of the New York Code in laying down a long list of presumptions, agreeing with the Indian Law Commissioners in the opinion that it is better not to fetter the discretion of the Judges. We have, however, admitted one or two such presumptions to a place in the Code, as, in the absence of an express rule, the Judges might feel embarrassed. These are—the presumption of death from seven years' disappearance, and the presumption of partnership from the fact of acting as partners.

We may observe that we have disposed, in an illustration, of a matter in which the laws of several countries contain elaborate, and we think somewhat arbitrary provisions, the presumption to be made in the case of the death of several persons in a common catastrophe. We treat it as an instance of the rule

as to the burden of proof. The person who affirms that A died before B must prove it. This is the principle adopted by the English Courts.

We follow the English law as to legitimacy being a necessary inference from marriage and cohabitation, and we adopt one or two of the rules of English law as to estoppel.

In the chapter as to the examination of witnesses, we have been careful to interfere as little as possible with the existing practice of the Courts, which in the Mofussil Courts and under the Code of Civil Procedure is of necessity very loose and much guided by circumstances, but we have put into propositions the rules of English law as to the examination and cross-examination of witnesses.

We have also considered it necessary, having regard to the peculiar circumstances of this country, to put into the hands of the Judge an amount of discretion as to the admission of evidence which, if it exists by law, is at all events rarely or never exercised in England. We expressly empower him to ask any questions upon any facts relevant or irrelevant, at any period of the trial, and we expressly declare that it is his duty in criminal cases, if he thinks that the public interest requires it, not merely to receive and adjudicate upon the evidence submitted to him by the parties, but also "to enquire to the utmost into the truth of the matter before him." The object of these provisions is to define simply and clearly the duties and the position of the Judges and those who practise before them. The English system, under which the Bench and the Bar act together and play their respective parts independently, and the professional organization on which it rests, have no doubt great advantages; but in this country such a system does not as yet exist, and will not for a very long course of time be introduced. In the Mofussil, generally speaking, the great mass of cases are conducted without the assistance of a Bar, and when advocates are employed there, they are usually brought from a distance, and have to appear before Judges who have not had the same professional training as English Judges, and are liable to be intimidated by advocates whose technical knowledge of law is greater than their own, and to whom the extremely intricate system of appeal which prevails in this country gives a power over the Judges unlike anything which exists in England. For this reason we have thought it necessary to strengthen the hands of the Judges and to enable them to act efficiently and promptly as the representatives of the public interest.

In connection with this subject, we may refer to some provisions which we have inserted in order to prevent the abuse of the power of cross-examination to credit. We believe the existence of that power to be essential to the administration of justice, and we believe it to be liable to great abuses. The need for the power and the danger of its abuse are proved by English experience, but in this country litigation of various kinds, and criminal prosecutions in particular, are the great engines of malignity, and it is accordingly even more necessary here than in England both to permit the exposure of corrupt motives and to prevent the use of the power

of exposure as a means of gratifying malice We have accordingly provided as follows :

Such questions may relate either to matters relevant to the case, or to matters not relevant to the case If they relate to matters relevant to the case, we think that the witness ought to be compellable to answer, but that his answer should not afterwards be used against him.

If they relate to matters not relevant to the case, except in so far as they affect the credit of the witness, we think that the witness ought not to be compelled to answer. His refusal to do so would, in most cases, serve the purpose of discrediting him, as well as an express admission that the imputation conveyed by the question was true.

In order to protect witnesses against needless questions of this kind, we enact that any advocate who asks such questions without written instructions (which the Court may call upon him to produce, and may impound when produced) shall be guilty of a contempt of Court, and that the Court may record any such question if asked by a party to the proceedings. The record of the question or the written instructions are to be admissible as evidence of the publication of an imputation intended to harm the reputation of the person affected, and such imputations are not to be regarded as privileged communications, or as falling under any of the exceptions to section four hundred and ninety-nine of the Indian Penal Code, merely because they were made in the manner stated Upon a trial for defamation, it would, of course, be open to the person accused to show, either that the imputation was true, and that it was for the public good that the imputation should be made (Ex 1, section 449, I. P. C.), or that it was made in good faith for the protection of the interest of the person making it or of any other person (Ex. 9). This is the only method which occurs to us of providing at once for the interests of a *bonâ fide* questioner and an innocent witness.

In the same spirit we have empowered the Court, in general terms, to forbid indecent and scandalous inquiries, unless they relate to facts in issue (as defined above), or to matters absolutely necessary to be known in order to determine whether the facts in issue existed ; and also to forbid questions intended to insult or annoy.

We prefer this general power to the sections drawn by the Commissioners, which forbid questions to married persons "which substantially amount to inquiring whether that person has had sexual intercourse forbidden to him or her by the law to which he or she is subject," and "questions regarding the occurrence of sexual intercourse between a husband and wife, except in the case of Christians, where the suit is for a decree of nullity of marriage on the ground of bodily incapacity.' We should regard these rules as dangerous. It is possible to imagine numerous cases in which it might be highly important to show that a married person was living with some one who was not her husband or his wife. A woman brings a false accusation against her servant. The motive is revenge for the discovery by the servant of an

intrigue by the mistress. A married man comes to prove an *alibi* on behalf of his mistress. A woman sues a married man on a bond. He pleads that the consideration was adultery. In all these cases, and so in many others which might be suggested, it appears to us that it would be absolutely necessary to admit such evidence as is referred to. As to questions relating to sexual intercourse between husband and wife, we think it better to forbid indecent and scandalous inquiries in general terms than to lay down a positive rule which, in possible cases, might produce hardship.

Finally, we deal (Chapter XV) with the question of the improper admission or rejection of evidence.

We provide in substance that in regular appeal each Court successively shall decide for itself to what evidence it will have regard. As for special appeals, we provide that if evidence is said to be improperly admitted, the objection must be taken before the inferior Appellate Court, and the Court called upon to say what its decision would be if the evidence objected to were rejected. If evidence is improperly rejected, we would permit the High Court either to look into the facts and deliver final judgment, or to remand the case.

Finally, we recommend that the draft Bill, together with this report, should be circulated for the opinion of the Local Governments.

J. F. STEPHEN.
J STRACHEY.
F. S. CHAPMAN.
F. R. COCKERELL.
J. F. D. INGLIS.
W. ROBINSON.

The 31*st March* 1871.

Second Report of the Select Committee.

We, the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations, to which the Indian Evidence Bill was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

Petition from certain Barristers and Advocates of Bombay, dated 18th August 1871.
From Officiating Secretary to Chief Commissioner of Coorg, No. $\frac{3}{4}\frac{3}{4}\frac{6}{6}$, dated 4th October 1871, and enclosures.
From certain Pleaders of the High Court, Bombay, dated 4th October 1871.
From Officiating Secretary to Chief Commissioner of Coorg, No. $\frac{4}{3}\frac{0}{0}$, dated 9th October 1871, and enclosure.
From Chief Secretary to Government, Fort Saint George, No. 166, dated 21st November 1871, and enclosures.
From F. J. Fergusson, Esq., Barrister, High Court, Calcutta, dated 8th December 1871, forwarding Memorial from Barristers and Advocates, High Court, Calcutta.
From Secretary to Chief Commissioner, Central Provinces, No. $\frac{2}{2}\frac{6}{6}\frac{4}{3}\frac{0}{3}$, dated 6th December 1871, and enclosures.
From Officiating Secretary to the Government of Bengal, No. 6326J, dated 13th December 1871, and enclosures.
Memorial from certain Members of the Madras Bar, dated 16th December 1871.

1. We have made some alterations in the arrangement of the Bill.

2. We have omitted the definitions of "proof" and "moral certainty" and the sections relating

From Secretary to Government, Panjáb, No. 1745 dated 13th December 1871, and enclosures.
From Officiating Registrar, High Court, Calcutta, No. 3936, dated 18th December 1871.
From Officiating Secretary to Chief Commissioner, Oudh, No. 5719, dated 22nd December 1871, and enclosures.

to inferences to be drawn by the Court as being suitable rather for a treatise than an Act.

3. We have omitted the provisions relating to material evidence, and have given a new and simpler definition of the difference between primary and secondary evidence.

4. We have provided that the Act shall apply to all judicial proceedings, but not to affidavits presented to any Court or officer, nor to proceedings in arbitration.

5. As to the effect of an admission by one of several persons jointly tried for an offence, we have omitted sections 120 and 121 of the original Bill. Instead of these, we have provided that when two or more persons are on their trial for the same offence at the same time, and an admission is proved against one of them, which affects others of the accused besides himself, it may be taken into consideration by the Court against all the persons whom it affects.

6. We have redrawn Chapter VI. as to the exclusion of oral by documentary evidence, so as to make the sections more distinct and complete. We believe that they now present the English law on the subject freed from certain refinements which would not be suitable for this country.

7. Exception was taken to the Bill in several quarters on the ground that it did not sufficiently dispose of the matter of presumptions. We have reconsidered this subject with attention, and have provided for it as follows :

Some presumptions have the effect of laying the burden of proof on particular persons in particular cases. These we have dealt with in sections 103 to 111 of the new Bill.

A conclusive presumption is a direction by the law that the existence of one fact shall, in all cases, be inferred from proof of another. This we have provided for in sections 112 and 113.

We have substituted the term 'conclusive proof' in these instances for that of 'necessary inference,' which was employed for the same purpose in the first draft of the Bill.

Other presumptions are in a substance mere maxims by which the Court ought to be guided in the interpretation of facts. Theoretically they are regarded in English law in a different light, that is to say, as artificial rules which the Court is bound to follow as to the inferences to be drawn from facts. Practically, however, so many exceptions are made that the difference between a presumption of law and a presumption of fact is hardly traceable. The distinction appears to us altogether unsuitable for this country, and likely to produce great inconvenience if it were introduced. We have accordingly, by section 114, put all such presumptions in the position of mere presumptions of fact with which the Court can deal at its discretion.

We have provided in the Chapter on the Burden of Proof that a Notification in the Gazette that a territory has been ceded to a

Native State shall be conclusive proof of a valid cession at the date mentioned in the Notification. The object of this section is to set at rest questions which, as we are informed, have arisen on this subject.

The subject of presumptions as to documents is a very special matter, and appears to us to belong to the subject of documentary evidence, under which head we have placed it in Chapter V.

Lastly, many subjects are treated by English writers under the head of presumptions which appear to us to belong rather to different branches of the substantive law, *e. g.*, the presumption that every one knows the law is in reality a branch of the substantive criminal law. We have omitted such presumptions as these from the law of evidence, because they do not belong to the subjects and because many of them are fictitious.

8. The chapter on oaths has been omitted, as they form the subject of a separate Bill now under discussion.

9. We also recommend the omission of sections 141 to 145 of the old draft, as to questions to credit asked by barristers or pleaders, and the substitution of provisions showing the principles by which the asking of such questions should be regulated, and empowering the Court, if any such question is improperly asked, to report the circumstance to the authority to which the person asking it is subject.

10. We have amended the wording of section 166 as to the Judge's power to ask questions. The section as originally drawn might have been taken to authorize him to found his judgment upon irrelevant matter, such as loose rumours. The intention of the section was to give him the fullest possible power of inquiry for the discovery of relevant matter. Section 164 as now drawn makes this clear.

11. We have omitted the chapter as to the duties of Judges and Juries, which will, we think, be more properly placed in the Code of Criminal Procedure. We have also omitted the provisions as to appeal in the first draft, and have substituted for them section 57 of Act II of 1855, which provides for the cases in which the improper admission or rejection of evidence shall be ground for a new trial or reversal of a decision.

12. Subject to these amendments we recommend that the Bill be passed, but we also recommend that the amended Bill *be* published in the Gazette, and that this report be not taken into consideration for a month from the date of its publication.

J. F. STEPHEN.
J. STRACHEY.
J. F. D. INGLIS.
W. ROBINSON.
F. S CHAPMAN.
R. STEWART.
J. R. BULLEN SMITH.
F. R. COCKERELL.

The 30th January 1872.